TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 189.

LEE LUNG, APPELLANT,

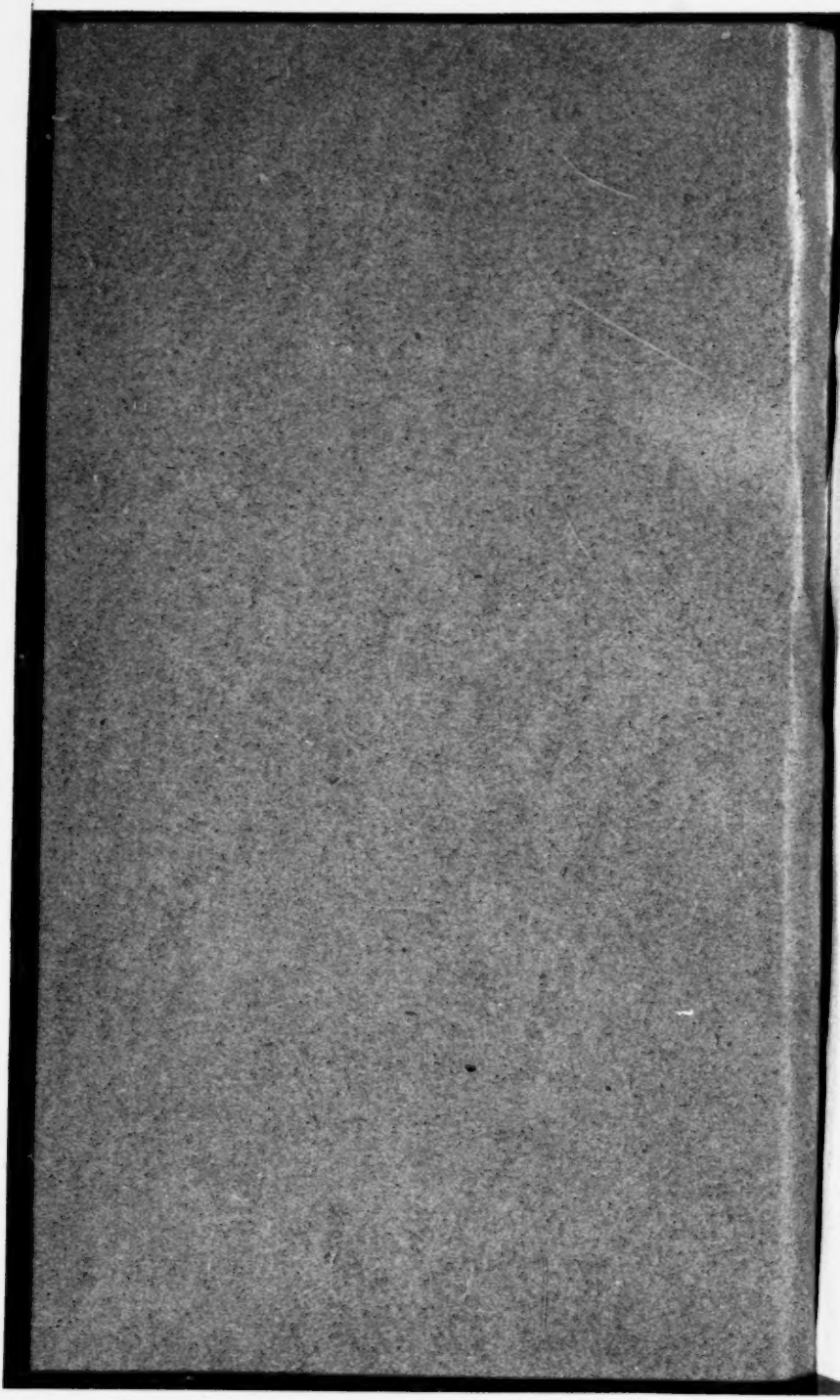
vs.

I. L. PATTERSON, COLLECTOR OF CUSTOMS FOR THE PORT OF PORTLAND, OREGON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED NOVEMBER 3, 1900.

(17,957.)



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1 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child. Citation on Appeal.

To I. L. Patterson, collector of customs for the port of Portland, district of Willamette, State of Oregon, and to John H. Hall, United States attorney for the district of Oregon and attorney for said I. L. Patterson, collector of customs, as aforesaid, Greeting:

Whereas Lee Lung has lately appealed to the *United States* Supreme Court of the United States of America *for* a decree rendered, in the district court of the United States for the district of Oregon in dismissing the petition of Lee Lung for a writ of *habeas corpus* herein, you and each of you are hereby cited and admonished to be and appear before said Supreme Court of the United States of America at the city of Washington, in the District of Columbia, before sixty days from the date hereof, to show cause, if any there be, why the said judgment order and decree, so far as Li Tom Shi is concerned, should not be *accorded* and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said district, this 24 day of September, A. D. 1900.

CHARLES B. BELLINGER, *Judge.*

2 [Endorsed:] In the district court of the United States for the district of Oregon. In the matter of the application of Lee Lung for writ of *habeas corpus* as to Li Tom Shi. Citation on appeal. Filed Sep. 24, 1900. E. D. McKee, clerk U. S. district court.

3 In the District Court of the United States for the District of Oregon, March Term, 1900.

Be it remembered, that on the 28th day of April 1900, there was duly filed in the district court of the United States for the district of Oregon, a petition for a writ of *habeas corpus* in words and figures as follows, to wit:

4 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child.

To the honorable the district court of the United States for the district of Oregon:

Your petitioner, Lee Lung, respectfully represents that he is a native-born citizen of the Chinese Empire; that he now is and has

been for more than twenty years last past a merchant, residing during all the said period of twenty years last past, except when absent on an occasional visit to China, during said time, in the city of Portland, State of Oregon, United States of America, carrying on and doing business therein as a merchant; that he is not and never has been a laborer; that as such merchant he belongs to the exempted classes of Chinese who, under the treaty between the United States of America and the Chinese Empire, and who, under the laws of the United States of America, are entitled to come into and reside and do business as merchants in the United States.

That about the month of October, 1898, your petitioner Lee Lung, left the United States temporarily and went on a visit to Canton China; that your petitioner returned to the United States on the ship "Monmouthshire" arriving at the port of Portland, State of Oregon, United States of America on the 3rd day of April, 1900; that on your petitioner's return to the United States he was promptly permitted to land by Hon. I. L. Patterson, collector of customs at the port of Portland, in the district of the Willamette as a Chinese merchant; that his right to land as a Chinese merchant was duly recognized by said collector of customs.

Your petitioner further represents that he has a wife whose name is Li Tom Shi and that he has a wife and daughter now in the tenth year of her age whose name is Li A. Tsoi.

Your petitioner further represents that on his return to the United States from China on the ship Monmouthshire, as aforesaid, your petitioner brought with him from China on said vessel his said wife Li Tom Shi and his said daughter Li A Tsoi, both of whom came with your petitioner as his family in said ship Monmouthshire, arriving at the port of Portland, Oregon, in the United States of America on the 3rd day of April, 1900, as aforesaid.

Your petitioner further represents that said I. L. Patterson, collector of customs aforesaid, at the port of Portland, Oregon on the 7th day of April, 1900, and without having any power or *examination* whatever to make any examination, except as to the certificates hereinafter referred to, made a pretended and partial examination, but no such examination as the law contemplates should be made in such cases, of the right of said Li Tom Shi and Li A Tsoi, wife and daughter of your petitioner as aforesaid, to enter into and remain in the United States as the wife and daughter of your petitioner, and then and there, to wit, on April 7, 1900, made what purports to be but what in fact is not a decision such as the law contemplates should be made in any Chinese case wherein such collector has jurisdiction to inquire and decide. But your petitioner avers that said collector of customs I. L. Patterson had, by reason of the existence and legal operation and effect of article III of the treaty between the United States of America and the Empire of China, ratifications of which were exchanged at Washington, December 7th, 1894, no jurisdiction or power whatever to inquire into or decide on testimony *aliunde* the certificates issued by the government of the colony of Hongkong and vised by the consular representative of the United States at the colony of Hongkong, China.

Your petitioner further represents that your petitioner and his family the said Li Tom Shi and the said Li A Tsoi, his wife and daughter aforesaid, for about one year before leaving China
6 for the United States as aforesaid, were all living in and residents of the city of Hongkong in the colony of Hongkong, and before leaving said colony of Hongkong for the purpose of coming to the United States as aforesaid, on said ship Monmouthshire, your petitioner's said wife and daughter applied to and obtained the permission of the government of the colony of Hongkong and *was* identified by the said government at Hongkong as the wife and daughter of your petitioner, and as being each entitled to come to the United States and reside therein as the wife and daughter of your petitioner; and said Li Tom Shi and said Li A Tsoi were each then subjects of the Chinese Empire and residents of the colony of Hongkong, and the said government of the colony of Hongkong did then and there, to wit, on or about the 3rd day of March, 1900, on evidence then submitted, determine and decide that said Li Tom Shi and said Li A Tsoi were the wife and daughter of your petitioner aforesaid respectively, and as such were each entitled to enter and remain in the United States as the family and wife and daughter of your petitioner, and said government of the colony of Hongkong did on said day, March 3rd, 1900, issue to each of said persons, namely, Li Tom Shi and Li A Tsoi, the wife and daughter of your petitioner aforesaid, a certificate each of which certificates was in the English language, and each of which showed such permission to your petitioner's said wife and daughter to come to and reside within the United States, and each of such certificates contained the name of said wife and daughter aforesaid respectively in their own proper signatures, and each of which certificates stated the individual, family, and tribal name, also the age, height and all physical peculiarities, occupation, and so forth, each of said certificates being in due legal form and in all respects in full compliance with article III of the treaty of 1894 hereinbefore referred to, and in all respects in full compliance with section 6, of the act of Congress of July 5, 1884, and acts supplemental to and amendatory thereof, although compliance with such acts of Congress your peti-
7 tioner respectfully claims was not necessary, and that each of said certificates were duly vised by the endorsement of the consular representative of the United States in said colony of Hongkong in all respects as provided by said treaty, and also in all respects as provided by said section 6 of the act of Congress of July 5, 1884, and laws supplemental and amendatory thereof, although compliance with the latter your petitioner respectfully represents was not necessary, in view of the provisions of the treaty aforesaid and of compliance therewith.

That said Li Tom Shi and said Li A Tsoi, wife and daughter aforesaid of your petitioner, are not either of them nor were they either of them ever at any time laborers, but the family of and the wife and daughter respectively of your petitioner a Chinese merchant.

And your petitioner further respectfully represents that on their

arrival at the port of Portland, Oregon, as aforesaid, the said Li Tom Shi and the said Li A Tsoi, wife and daughter of your petitioner aforesaid, presented said certificates respectively to said I. L. Patterson, collector of customs, aforesaid, and made claim that under and by virtue of such certificates they were entitled to enter and remain in the United States as the wife and daughter and family of your petitioner.

Your petitioner avers that in virtue of such certificates respectively the said Li Tom Shi and the said Li A Tsoi, wife and daughter aforesaid of your petitioner, were each entitled in virtue of said article III of the treaty aforesaid to enter the United States and reside therein as the family of your petitioner.

Your petitioner further claims, that notwithstanding all these facts, such certificates were each ignored by said I. L. Patterson, collector of customs, and held for naught, the said collector of customs refusing to recognize or consider the same and the said wife and daughter of your petitioner aforesaid were each wrongfully and unlawfully, and in violation of the rights of your petitioner's
8 said wife and daughter aforesaid, under the provisions of the treaty hereinbefore cited, refused entry into the United States by said I. L. Patterson, collector of customs aforesaid.

Your petitioner further represents that immediately on the rendition of said alleged and pretended decision by the said collector of customs, each of said persons, the said wife and daughter of your petitioner aforesaid, took an appeal from said alleged and pretended decision of said collector of customs to the Secretary of the Treasury of the United States; and your petitioner avers that the Secretary of the Treasury has never yet either examined into said appeals nor made any decision therein one way or the other, nor has said appeals or either of them ever been considered, examined or decided, either by O. L. Spaulding, Assistant Secretary of the Treasury, or by any other person except as hereinafter stated.

That on April 18th, 1900, one W. S. Chance, then chief of the special agents of the Treasury Department at Washington, D. C. pretended to examine said appeals and rendered a pretended decision therein, which pretended decision purports to affirm the alleged decision of the collector of customs aforesaid refusing to allow said Li Tom Shi and said Li A Tsoi, wife and daughter of your petitioner, to enter the United States.

Your petitioner avers that it is claimed as your petitioner is advised and believes, by the collector of customs aforesaid that said alleged decision by said W. S. Chance as hereinbefore stated is the decision of O. L. Spaulding, Assistant Secretary of the Treasury; but your petitioner denies that said O. L. Spaulding, either as Assistant Secretary of the Treasury or otherwise, has ever made any examination of said appeals, or has ever made any decision therein one way or the other.

And your petitioner further avers that the said O. L. Spaulding as Assistant Secretary of the Treasury has no authority or jurisdiction whatever, to examine into or decide said appeals or either of them, that said O. L. Spaulding, as Assistant Secretary of the Treas-

ury has never been legally or lawfully designated by the
9 Secretary of the Treasury to examine into and decide such appeals, and your petitioner avers furthermore that the Secretary of the Treasury has no jurisdiction or power whatever to designate or authorize Assistant Secretary of the Treasury O. L. Spaulding, or any other Assistant Secretary of the Treasury to examine into or decide said appeals.

And your petitioner further avers that the said I. L. Patterson, collector of customs aforesaid at the port of Portland, notwithstanding the invalidity of the said alleged decision by said W. S. Chance, and notwithstanding the further fact that said appeals have never yet been examined or decided either by the Sectretary of the Treasury or any Assistant Secretary of the Treasury authorized to decide the same, recognizes said decision as binding on him and as being an affirmance of his alleged decision refusing to allow said Li Tom Shi and said Li A Tsoi the wife and daughter of your petitioner, to enter and reside in the United States, and the said I. L. Patterson, collector of customs, aforesaid, now wrongfully detains and holds said Li Tom Shi and said Li A Tsoi the wife and daughter of your petitioner aforesaid, in his custody and now threatens to, and is about to place said Li Tom Shi and said Li A Tsoi the wife and daughter of your petitioner, aforesaid, on board the steamship Braemer now in the port of Portland, Oregon, and about to depart for China, and threatens to and intends to and will unless restrained by this honorable court place said wife and daughter of your petitioner on board said steamship and will send them back to China.

That said I. L. Patterson, collector of customs aforesaid, claims to hold the said wife and daughter of your petitioner as aforesaid under and by color of the authority of the United States and your petitioner's said wife and daughter *is* restrained in the custody of the said collector of customs aforesaid, and *is* about to be deported by him from this country back to China in violation of the treatys now existing between the United States of America and the Chinese Empire, and in violation of the acts of Congress now in force.

10 Your petitioner therefore claims that said Li Tom Shi and said Li A Tsoi, the said wife and daughter of your petitioner, are wrongfully and illegally imprisoned, detained, confined and restrained of their liberty by said I. L. Patterson, at the city of Portland, county of Multnomah, State and district of Oregon, the only cause or pretense for such wrongful and illegal imprisonment, restraint and detention being the alleged decision of the Assistant Secretary of the Treasury as aforesaid.

Finally your petitioner respectfully avers and claims that the said Li Tom Shi and the said Li A Tsoi, wife and daughter of your petitioner aforesaid are, by virtue of article III of the existing treaty between the United States of America and the Chinese Empire, hereinbefore cited, and by virtue of their certificates produced by them respectively to said collector of customs, as hereinbefore cited, entitled to enter and remain in the United States as the family and wife and daughter of your petitioner, a Chinese merchant; and your petitioner avers that their detention by the said I. L. Patterson,

collector of customs aforesaid, is without jurisdiction and without due process of law and in direct violation of their rights under the treaty hereinbefore cited, and the Constitution and laws of the United States.

And your petitioner further avers that said I. L. Patterson, collector of customs, aforesaid, was wholly without jurisdiction to take the testimony of witnesses, which he the said collector of customs did do, for the purpose of contradicting or controverting the facts stated in said certificates respectively as hereinbefore stated and referred to; and said I. L. Patterson, collector of customs aforesaid was without jurisdiction or power to decide on the testimony of such witnesses as to the rights of said Li Tom Shi and said Li A Tsoi, wife and daughter aforesaid of your petitioner, to enter and remain in the United States.

Your petitioner therefore respectfully represents to the court:

1st. That Li Tom Shi and Li A Tsoi, the said wife and
11 daughter of *of* your petitioner, *is* entitled to enter and remain in the United States as the wife and daughter of your petitioner a Chinese merchant; that they and each of them fully complied with all the provisions and requirements of the existing treaty aforesaid and of the laws of the United States, to entitle them to come and remain in the United States.

2nd. That said collector of customs, I. L. Patterson, had no jurisdiction whatever, to make the examination and decision he claims to have made, and that no such examination or decision of the appeals in said cases as the law contemplates *were* ever made by the Secretary of the Treasury or by any Assistant Secretary of the Treasury who had any jurisdiction or power to examine and decide such appeals.

3rd. That the said wife and daughter of your petitioner are entitled to have their said appeals decided by the Secretary of the Treasury as the law provides, and until such appeals are so considered and decided the said I. L. Patterson, as such collector of customs, has no jurisdiction, right or power whatever to deport the said wife and daughter of your petitioner, as he now threatens to do and will do unless restrained by this honorable court; and should they be deported as the said collector of customs now threatens to do, and intends to do, on said steamship Braemer, they will be taken out of the jurisdiction of this court and deprived of their constitutional and legal right to have their cases determined by the officials of this country as the law provides.

Wherefore, your petitioner prays that a writ of *habeas corpus* may issue in due form of law out of this honorable court, directed to the said I. L. Patterson, collector of customs aforesaid, commanding him to produce in this court at such time and place as may be designated in such writ, the bodies of said Li Tom Shi and Li A Tsoi, the wife and daughter of your petitioner aforesaid, for the purpose of such disposition as may be in accordance with the facts and the law of the case, and your petitioner will ever pray.

LEE LUNG, *Petitioner.*

12 UNITED STATES OF AMERICA, } ss:
State of Oregon, County of Multnomah, }

I, Lee Lung, being first duly sworn, say: That I am the petitioner in the above-entitled proceeding, and that the foregoing petition is true as I verily believe.

LEE LUNG.

Subscribed and sworn to before me this 27th day of April, 1900.
[SEAL.] H. C. ROBERTSON,
Notary Public for Oregon.

Filed April 28, 1900.

E. D. McKEE, *Clerk.*

13 And afterwards, to wit, on the 28th day of April, 1900, there was duly filed in said court, an order for writ of *habeas corpus* to issue in words and figures as follows, to wit:

14 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for Writ of *Habeas Corpus* as to Li Tom Shi and Li A Tsoi, His Wife and Child.

Upon reading and filing the petition of Lee Lung, duly signed and verified by him, whereby it appears that Li Tom Shi and Li A Tsoi are illegally imprisoned and restrained of their liberty by I. L. Patterson, collector of customs, district of Willamette, port of Portland, Oregon, and stating wherein the alleged illegality consists, from which it appears to me that a writ of *habeas corpus* ought to issue, it is hereby ordered that a writ of *habeas corpus* issue out of and under the seal of this court directed to the said I. L. Patterson, commanding him to produce the body of the said Li Tom Shi and Li A Tsoi before me, in the court-room of the said court, on the 2nd day of May, 1900 at 10 o'clock a. m. of that day, to do and receive what shall then and there be considered concerning the said Li Tom Shi and Li A Tsoi and to certify and return therewith the time and cause of their imprisonment or restraint and that he have then and there the said writ.

Dated at Portland, Oregon, this 28th day of April, 1900.

CHARLES B. BELLINGER, *Judge.*

Filed April 28, 1900.

E. D. McKEE, *Clerk.*

15 And afterwards, to wit, on the 28th day of April, 1900, there was issued out of said court a writ of *habeas corpus* in words and figures as follows, to wit:

16 In the District Court of the United States for the District of Oregon.

The President of the United States of America to I. L. Patterson, collector of customs, district of Willamette, port of Portland, Oregon, Greeting:

You are hereby commanded that you have the bodies of Li Tom Shi and Li A Tsoi by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever names the said persons above named shall be called or charged, before the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon, at the United States court-room, in the city of Portland, in said district, at 10 o'clock in the forenoon of Wednesday, the 2d day of May, A. D. 1900 to do and receive what shall then and there be considered, concerning the said persons above named.

And have you then and there this writ.

[SEAL.] Witness the Honorable Charles B. Bellinger, judge of said court, this 28th day of April, A. D. 1900.

E. D. McKEE, *Clerk*,
By G. H. MARSH,
Deputy Clerk.

[Endorsed:] No. 4499. In the district court of the United States for the district of Oregon. *In re* Li Tom Shi and Li A Tsoi, petitioner. Writ of *habeas corpus*. Returned and filed April 28, 1900. E. D. McKee, clerk, by ——— ———, deputy clerk.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I hereby certify that on the 28th day of April, 1900, at Portland, Oregon, Multnomah county, in said district, I duly served the original writ of *habeas corpus* upon the therein-named I. L. Patterson, collector of customs of district of Willamette, port of Portland, by delivering to him personally said original writ.

ZOETH HOUSER,
United States Marshal,
By S. L. MORSE, *Deputy.*

17 And afterwards, to wit, on the 7th day of May 1900 there was duly filed in said court, a return of respondent to writ of *habeas corpus*, in words and figures as follows, to wit:

18 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A Tsoi, His Wife and Child.

To the honorable the district court of the United States for the district of Oregon:

Now at this time comes I. L. Patterson, collector of customs for the district of Willamette, and in obedience to the order of your honorable court now produces the bodies of Li Tom Shi and Li A. Tsoi in court, and answering the petition for a writ of *habeas corpus* filed herein,

Denies that Li Tom Shi is the wife of Lee Lung, and that Li A. Tsoi is the daughter of Lee Lung.

Admits that petitioner brought with him from China on the ship "Monmouthshire" arriving in Portland upon the 3rd day of April, 1900, the said Li Tom Shi and the said Li A. Tsoi, representing them to be his wife and daughter, respectively.

Denies that your respondent, collector of customs as aforesaid, upon the 7th day of April, 1900, or at any other time without having power of examination, except as to certificates issued by the government of the colony of Hongkong and vised by the consular representative of the United States at said colony, or that he made a pretended or partial examination, or did not make said examination as the law contemplates should be made in such cases of the right of said parties to enter into and remain in the United States as the wife and daughter of petitioner, or otherwise or at all, or that on the said 7th day of April, 1900, or at any other time made what purported to be, but what in fact was not a decision as to the admission of said parties.

19 Denies that respondent had no jurisdiction to decide on testimony *aliunde* the said certificates claimed to have been issued, as aforesaid.

Admits that said Li Tom Shi and the said Li A Tsoi were residents of the city of Hongkong in the colony of Hongkong, and for the purpose of coming to the United States applied to and obtained what purported to be a permission of the government of the colony of Hongkong to come to the United States, but denies that said permission is regular in form, or that the said parties therein mentioned *was* identified as the wife and daughter of the said Lee Lung.

Denies that the said Li Tom Shi and Li A. Tsoi alleged wife and daughter of petitioner's are not laborers; denies that they are the wife and daughter respectively of petitioner.

Admits that on the arrival of the said parties in the city of Portland they presented said alleged certificates to your respondent as collector of customs, and made claim that under and by virtue of said certificates they were entitled to enter and remain in the United States as the wife and daughter of Lee Lung; denies that by virtue of said certificates or either of them the said Li Tom Shi and Li A. Tsoi, alleged wife and daughter of petitioner, were entitled in virtue

of article III of the treaty between the United States of America and the Empire of China, referred to in said petition, to enter into the United States, or reside therein as the family of Lee Lung.

Denies that said certificates or either of them were ignored by respondent, but admits that they were held to be insufficient to permit the said parties to land within the United States, but denies that said alleged wife and daughter, or either of them, were wrongfully or unlawfully, or in violation of the rights of the said Lee Lung's alleged wife and daughter under the provisions of the treaty referred to refused entry into the United States by respondent, or were otherwise refused except as hereinafter stated.

Admits that the said Li Tom Shi and the said Li A. Tsoi upon the rendition of the decision by your respondent denying them the right to land in the United States that the said Li Tom Shi
20 and the said Li A. Tsoi took an appeal from said decision to the Secretary of the Treasury of the United States, but denies that the said Secretary of the Treasury has never yet examined into said appeal nor made any decision therein, or that said appeal has not been considered, examined or decided by either O. L. Spaulding, Assistant Secretary of the Treasury, or any other person in authority.

Denies that W. S. Chance, chief of the special agents of the Treasury Department at Washington, pretended to examine said appeal or rendered a pretended or any decision therein, or any pretended decision which purported to affirm the alleged decision of the collector of customs, refusing to allow the said parties to enter the United States. Denies that said O. L. Spaulding as Assistant Secretary of the Treasury has no authority or jurisdiction to examine into or decide such appeals, or that the said O. L. Spaulding as Assistant Secretary of the Treasury has never been legally or lawfully designated by the Secretary of the Treasury to examine into and decide such appeals; and denies that the Secretary of the Treasury has no jurisdiction or power whatever to designate or authorize the Assistant Secretary of the Treasury, O. L. Spaulding, or any other Assistant Secretary of the Treasury to examine into or decide said appeals.

Admits that under a decision of the Secretary of the Treasury affirming the decision of respondent refusing said parties to land within the United States, your respondent now detains and holds the said Li Tom Shi and the said Li A. Tsoi in his custody for deportation to the country from whence they came, but denies that said detention is unlawful.

Denies that the said Li Tom Shi and the said Li A. Tsoi, or either of them, are wrongfully or illegally imprisoned, detained, confined or restrained of their liberty by your respondent at the city of Portland, county of Multnomah, State of Oregon, or elsewhere or at all.

21 Denies that the said Li Tom Shi or the said Li A. Tsoi, or either of them, are by virtue of article III, or any other portion of the existing treaty between the United States of America and the Chinese Empire, or by virtue of their alleged certificates produced by them to your respondent entitled to enter in or remain in the

United States as a family or wife, or daughter of said Lee Lung or otherwise or at all.

Denies that your respondent, collector of customs as aforesaid, was wholly or at all without jurisdiction to take testimony of witnesses which he did do for the purpose of contradicting and controverting the facts pretended to be stated in said pretended certificates was without jurisdiction or power to decide the testimony of said witnesses as to the rights of the said Li Tom Shi and the said Li A. Tsoi, alleged wife and daughter of the said Lee Lung, to enter or remain in the United States.

Denies that Li Tom Shi and Li A. Tsoi, or either of them, are entitled to enter or remain in the United States as the wife or daughter of the said Lee Lung, or otherwise or at all, or that they, or either of them, have fully or at all complied with all or any of the provisions or regulations of the existing treaty and laws of the United States to entitle them to come or remain within the United States, and denies that your respondent had no jurisdiction to make or examine a decision, or that no examination or decision of the appeals in said cases as the law contemplates were made by the Secretary of the Treasury or any assistant thereof who had jurisdiction or power to examine or decide such appeals.

Your respondent for a further and separate return and reasons why he detained the said Li Tom Shi and Li A. Tsoi in his custody, alleges:

That on the 7th day of April, 1900, at the port of Portland, in the State and district of Oregon, the said Li Tom Shi and Li A. Tsoi, made application to land in the United States at said port of Portland from the ship "Monmouthshire" as of the excepted class
22 of Chinese persons; that the said Li Tom Shi and the said Li A. Tsoi, each presented what they claimed to be a certificate issued by the government of the province of Hongkong and vised by the United States consul general at Hongkong, the originals of which are hereunto attached and made a part of this return; that the said certificates were not in conformity with the laws of the United States, not being signed by the registrar general of Hongkong person in authority there, and who is required to sign such certificates, but was signed by one F. A. May, whom your respondent is informed, and therefore alleges was the then captain general of police of Hongkong, and that a Mr. Lockhart is the registrar general of Hongkong; that Mr. Lockhart's name does not appear upon said alleged certificates; that said certificates were duly considered by your respondent and your respondent took other testimony to determine whether or not the said Li Tom Shi and Li A. Tsoi were of the excepted class of Chinese persons entitled to land as such under the laws of and treaties of the United States; that after considering all of the testimony together with said certificates your respondent as collector of customs rendered his decision in the case of Mrs. Li Tom Shi in substance as follows to wit:

"No. 1.

"Office of the collector of customs, district of Willamette.

"PORTLAND, OREGON, *April* 7, 1900.

"Now at this time comes on for hearing the application of Mrs. Li Tom Shi a subject of the Emperor of China, for admission to the United States as a wife of Lee Lung, and after hearing the evidence of applicant and witnesses on behalf of the applicant, and the evidence of Lee Lung and Miss Li A. Tsoi and irregularity of consular certificate, and no evidence of marriage, and being at this time fully advised in the premises, it is ordered that the said Mrs. Li Tom Shi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove *his* right to land.

"I. L. PATTERSON,
"[SEAL.] *Collector of Customs.*"

Did upon the same date render a like decision with the exception of there being no reference to marriage, in the case of Li A. Tsoi; that thereafter upon the 10th day of April, 1900, said Li Tom Shi and the said Li A. Tsoi duly perfected an appeal from the said decision of the collector of customs denying them the right to land in the United States to the Secretary of the Treasury of the
23 United States, the said Secretary of the Treasury, by O. L. Spaulding Assistant Secretary of the Treasury, on the 18th day of April, 1900, rendered an opinion duly affirming said decision of your respondent, refusing said parties to land within the United States, the original of which is hereunto appended, and made a part of this return; that respondent does not detain or hold either the said Li Tom Shi or Li A. Tsoi for any other reason or cause save and except as herein set forth.

Wherefore, respondent prays your honorable court for an order remanding the said Li Tom Shi and the said Li A. Tsoi to his custody for deportation from the United States to the country from whence they came.

I. L. PATTERSON.

DISTRICT OF OREGON, *ss:*

I, I. L. Patterson, being first duly sworn, depose and say, that I am the collector of customs for the district of Willamette; that I have read the foregoing return and know the contents thereof, and that the same is true as I verily believe so help me God.

I. L. PATTERSON.

Subscribed and sworn to before me this 7th day of May, 1900.

E. D. McKEE,
Clerk United States District Court, District of Oregon,
By G. H. MARSH, *Deputy.*

24 Refused. No. 2.

Office of the collector of customs, district of Willamette.

PORTLAND, OREGON, *April* 7, 1900.

Now at this time comes on for hearing the application of Miss Li A Tsoi a subject of the Emperor of China, for admission to the United States as a daughter — Lee Lung and after hearing the evidence of applicant and —— ——, witnesses on behalf of the applicant, and the evidence of Mrs. Li Tom Shi and Lee Lung and irregularity of papers, and being fully advised in the premises, it is ordered that the said Miss Li A Tsoi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove *his* right to land.

[SEAL.]

I. L. PATTERSON,
Collector of Customs.

25 EXHIBIT "A."

Certificate of Li A Tsoi.

No. 1794.

This certificate is issued under the treaty between the Government of the United States and the government of China proclaimed by the President of the United States on the 8th day of December, 1894, in conformity with section 6 of the act of Congress of the United States, approved 6th July, 1884, entitled An act to amend an act to execute certain treaty stipulations relating to Chinese, approved May 6th, 1882, to Li A Tsoi, a Chinese person, "other than a laborer," who is about to go to the United States, as evidence of the permission of the government where *he* last resided for *him* to go to the United States, and as a means of establishing *his* identity; and it shall be *prima facie* evidence of *his* right to land in the United States.

(Photograph.)

{ Seal of the Registrar General, Hongkong. }

Name of permitted person in his or her proper signature: Cannot write.

Full name, individual: A Tsoi family Li tribal Li.
Title or official rank, if any: ——.
Age: 10 years Height, feet 4, inches ½.
Physical marks or peculiarities: No marks or scars.
Former occupation or profession: } Daughter of Li Lung, merchant of Portland, Oregon, U. S. A.
Where pursued: }
Present occupation or profession: }
Estimated value of last-mentioned business: ——.
Where pursued: Hongkong & Canton. When: In 1890–1900.
For how long: 10 years. Place of residence: 50 Bomham strand.
Is not a laborer, and is entitled to land in the United States

under the act of Congress approved July 5th, 1884, and the treaty of March 17th, ratified December 7th, 1894. To *going* with her father to Portland, Oregon, U. S. A., where she will commence to study English.

3rd March, 1900.

F. H. MAY,
By Registrar General, Hongkong.

26 I do hereby certify that I have examined into the truth of the statements set forth in the foregoing certificate, and find upon examination that the same are true. The seal and signature to the foregoing certificate are the genuine seal and signature of F. H. May.

In witness whereof, I have hereunto set my hand and affixed the seal of this consulate at Hongkong the day of Mar. 5, 1900.

[SEAL.] R. WILDMAN,
U. S. Consul General.

Fee for vise, $1. Gold.

Under an opinion of the U. S. Attorney General, dated May 20, 1896, this certificate will be valid if signed by the proper officer of the government in which the Chinese last resided, and the registrar general at Hongkong is recognized as competent to sign certificates for Chinese residents of that colony of the exempt class. The Secretary of the Treasury has uniformly held that the omission from these certificates of any of the statements required in the statute, is fatal to the sufficiency of the certificate, as showing *prima facie* right to enter the United States.

Endorsed: Br. S. S. "Monmouthshire." April 6, 1900. Miss Li A Tsoi, daughter Lee Lung. Refused Apr. 7, 1900.

27 Refused. No. 1.

Office of the collector of customs, district of Willamette.

PORTLAND, OREGON, *April* 7, 1900.

Now at this time comes on for hearing the application of Mrs. Li Tom Shi a subject of the Emperor of China, for admission to the United States as a wife of Lee Lung and after hearing the evidence of applicant and —— ——, witnesses on behalf of the applicant, and the evidence of Lee Lung and Miss Li A Tsoi and irregularity of consular certificates, and no evidence of marriage, and being at this time fully advised in the premises, it is ordered that the said Mrs. Li Tom Shi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove *his* right to land.

[SEAL.] I. L. PATTERSON,
Collector of Customs.

28 EXHIBIT "B."

Certificate Li Tom Shi.

No. 1793.

This certificate is issued under the treaty between the Government of the United States and the government of China proclaimed by the President of the United States on the 8th day of December, 1894, and in conformity with section 6 of the act of Congress of the United States, approved 6th July, 1884, entitled An act to amend an act to execute certain treaty stipulations relating to Chinese, approved May 6th, 1882, to Li Tom Shi, a Chinese person, "other than a laborer," who is about to go to the United States, as evidence of the permission of the government where *he* last resided for *him* to go to the United States, and as a means of establishing *his* identity; and it shall be *prima facie* evidence of *his* right to land in the United States.

(Photograph.)

{ Seal of Registrar General, Hongkong. }

Name of permitted person in his or her proper signature: Cannot write.

Full name, individual: Tain Shi family Li tribal Li.

Title or official rank, if any: ——.

Age: 21 years Height, feet 4, inches 9¼.

Physical marks or peculiarities: No marks or scars.

Former occupation or profession: Unmarried woman.

Where pursued: San Wui district.

Present occupation or profession: Wife of Li Lung, merchant of Portland, Oregon, U. S. A.

Estimated value of last-mentioned business: ——.

Where pursued: Hongkong & Canton. When: In 1898–1900.

For how long: Fourteen months. Place of residence: 50 Bonham strand.

Is not a laborer, and is entitled to land in the United
29 States, under the act of Congress approved July 5th, 1884, and the treaty of March 17th, ratified December 7th, 1894. To *going* with her husband to Portland, Oregon, U. S. A.

3rd March, 1900.

F. H. MAY,
By Registrar General, Hongkong.

I do hereby certify that I have examined into the truth of the statements set forth in the foregoing certificate, and find upon examination that the same are true. The seal and signature to the foregoing certificate are the genuine seal and signature of F. H. May.

In witness whereof, I have hereunto set my hand and affixed the seal of this consulate at Hongkong, this day of Mar. 5, 1900.

[SEAL.] R. WILDMAN,
U. S. Consul General.

Fee for vise, $1. Gold.

Under an opinion of the U. S. Attorney General, dated March 20, 1896, this certificate will be valid if signed by the proper officer of the government in which the Chinese last resided, and the registrar general at Hongkong is recognized as competent to sign certificates for Chinese residents of that colony of the exempt class. The Secretary of the Treasury has uniformly held that the omission from these certificates of any of the statements required in the statute, is fatal to the sufficiency of the certificate, as showing *prima facie* right to enter the United States.

Endorsed: Br. S. S. "Monmouthshire." Apr. 6, 1900. Mrs. Li Tom Shi wife Lee Lung. Refused April 7, 1900.

30 Division of special agents.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, *April* 18, 1900.

Collector of customs, Portland, Oregon.

SIR: The department has received your letter of the 11th instant, transmitting an appeal from your decision denying admission to Chinese persons named Li Tom Shi and Li A. Tsoi, the alleged wife and daughter of Lee Lung, a Chinese merchant domiciled in this country.

The applicants presented to you certificates in the form prescribed by section 6 of the act of July 5, 1884, executed by "F. H. May registrar general," Hongkong, and you state that Mr. May is the captain of police at Hongkong and not the registrar general. You are advised that certificates so issued are not valid, the incumbent of the office of registrar general at Hongkong only being recognized as the proper authority for the issuance of such certificates.

The appeal filed in this case refers to the recent decision of the Supreme Court in the case of The United States *vs.* Mrs. Gue Lim *et al.*, promulgated in Synopsis 22056, wherein it was held that "when the fact is established to the satisfaction of the authorities that the person claiming to enter, either as wife or minor child, is in fact the wife or minor child of one of the members of a class mentioned in the treaty as entitled to enter, then that person is entitled to admission without the certificate."

In this case Li Tom Shi is admitted to be the second and plural wife of Lee Lung, a Chinese merchant domiciled in this country, whose first wife resides in China, and it is claimed that Li A. Tsoi is the minor child of the said Lee Lung by said first wife.

The laws of the United States do not recognize plural marriages as valid, and while they may be so recognized in China, the said

Li Tom Shi is not the valid wife of Lee Lung under our laws and in the light of the decision of the Supreme Court referred to.

31 In a letter addressed to the collector of customs at Port Townsend, Washington, it was stated that "in instances where women or minor children apply for admission at your port, claiming to be the wives or children of Chinese persons lawfully domiciled here as persons of the exempt class of Chinese, you should require such women or children to produce evidence sufficient to satisfy you that they are the wives or children of such persons."

In the cases under consideration the evidence presented in the case of Li A. Tsoi is conflicting and inconclusive, and not of the satisfactory character required.

Confirming department's telegram of this date, you are therefore advised that the appeals of Li Tom Shi and Li A. Tsoi are overruled and your decision denying them admission is sustained. The enclosures of your letter are herewith returned.

Respectfully,

O. L. SPAULDING,
Assistant Secretary.
W. S. C.

Enclosures.

Endorsed: Return to writ of *habeas corpus*. Filed May 7, 1900. E. D. McKee, clerk.

32 And afterwards, to wit, on the 7th day of May, 1900, there was duly filed in said court a reply to return of respondent, in words and figures as follows, to wit:

33 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for Writ of *Habeas Corpus* as to Li Tom Shi and Li A Tsoi, His Wife and Child.

To the honorable the district court of the United States for the district of Oregon:

Now, at this time, comes Lee Lung, the petitioner in the above-entitled proceeding, and makes reply and traverse to the return of I. L. Patterson, collector of customs, filed herein as follows:

Your petitioner denies that the certificates produced by said Li Tom Shi and Li A Tsoi to the collector of customs, were not in conformity with the law of the United States;

Your petitioner denies that under the laws of the United States it was necessary that such certificates should be signed by the registrar general of Hongkong, or that he is required to sign such certificates; although your petitioner avers that said certificates and each of them were signed by one F. A. May at the instance and under the direction of the registrar general of Hongkong and as and for him.

And your petitioner avers that F. A. May, whose signature is attached to each of said certificates, and placed there together with

the official seal of the registrar general with the consent and at the instance and under the directions of the registrar general of Hongkong, is an official himself, high in authority in the British colony of Hongkong, and with full jurisdiction and power to represent the government of the British colony of Hongkong, and also the registrar general in the matter of the execution of such certificates, and each of said certificates contains the official seal of the registrar general of the British colony of Hongkong, by authority of
34 such government; and the said certificates, your petitioner avers, are each of them the certificates of the government of the British colony of Hongkong, and are in all respects all that is required by the law of the United States and the treatys of the United States now existing between the United States Government and the imperial government of China.

Your petitioner further replying, as in his petition, avers that said I. L. Patterson, collector of customs, erred in holding said certificates and each of them irregular, and in admitting testimony to contradict such certificates, and in all this the collector of customs exceeded his jurisdiction, erred in law, and his decision is therefore reviewable in this court.

Your petitioner denies that the Secretary of the Treasury by O. L. Spaulding, Assistant Secretary of the Treasury, did on the 18th day of April, 1900, or at any other time, render an opinion duly affirming said alleged decision of the collector of customs.

Your petitioner avers that what is averred to be the original of such opinion and decision attached to the return herein, shows upon its face that it is not the decision of the Secretary of the Treasury, or of Assistant Secretary of the Treasury, O. L. Spaulding, but that the same is the decision of W. S. Chance, chief of the special agents of the Treasury Department.

Your petitioner further avers that the pretended hearing before the collector of customs on the 7th day of April, 1900 as aforesaid, was had before your petitioner had secured any counsel, and he had no counsel present to advise him as to his rights before the collector of customs, and that such examination was without jurisdiction, perfunctory and was not a thorough examination of the case.

Wherefore, your petitioner prays as in his original petition.

LEE LUNG, *Petitioner.*

35 UNITED STATES OF AMERICA, }
District of Oregon, County of Multnomah, } ss:

I, Lee Lung, being first duly sworn, say: That I am the petitioner named in the foregoing reply, and that said reply is true as I verily believe.

LEE LUNG.

Subscribed and sworn to before me this 7th day of May, 1900.

[SEAL.] H. C. ROBERTSON,
Notary Public for Oregon.

UNITED STATES OF AMERICA, }
District of Oregon, } ss:

Due and legal service of the foregoing reply by duly certified copy thereof, as required by law, is hereby admitted and accepted at Portland, Oregon, this — day of May, 1900.

JOHN H. HALL,
Attorney for Respondent.

Filed May 7, 1900.

E. D. McKEE, *Clerk.*

36 And afterwards, to wit, on the 9th day of May 1900 there was duly filed in said court a motion to quash writ in words and figures as follows, to wit:

37 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child.

Now at this time comes I. L. Patterson by John H. Hall, U. S. attorney, and moves the court that the writ of *habeas corpus* heretofore issued in the above-entitled cause be dismissed for the reason that your honorable court hath not jurisdiction of the subject-matter or over the persons therein named.

JOHN H. HALL,
United States Attorney.

Filed May 9, 1900.

E. D. McKEE, *Clerk.*

38 And afterwards, to wit, on Saturday, the 12th day of May 1900, the same being the 60th judicial day of the regular March term of said court; present: the Honorable Charles B. Bellinger United States district judge presiding, the following proceedings were had in said case, to wit:

39 In the District Court of the United States for the District of Oregon.

In the Matter of the Petition of LI TOM SHI and LI A TSOI for a Writ of *Habeas Corpus.* No. 4499.

MAY 12, 1900.

This cause was tried by the court upon the petition and return of respondent and the testimony and was argued by Mr. John H. Mitchell and Mr. Charles J. Schnabel, of counsel for the petitioners, and by Mr. John H. Hall, United States attorney; and it appearing to the court that this court is without jurisdiction in this cause, it is ordered and adjudged that the petition for a writ of *habeas corpus* be, and the same is hereby, dismissed, and that said petitioners Li Tom Shi and Li A Tsoi be, and they are hereby, remanded to the custody of the respondent from whence they came.

40 And afterwards, to wit, on the 12th day of May, 1900, there was duly filed in said court an opinion in words and figures as follows, to wit:

41 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* for Li Tom Shi and Li A Tsoi, His Wife — Child.

John H. Hall for the Government.
John H. Mitchell and Charles J. Schnabel for the petitioner.

BELLINGER, *J.*:

This is a proceeding on a writ of *habeas corpus*, issued upon the petition of Lee Lung in behalf of Li Tom Shi and Li A Tsoi, his wife and child, who recently arrived at this port on the steamer Monmouthshire and were refused landing by the collector of customs. Lee Lung is a merchant, doing business in this city and having business connections with various Chinese mercantile establishments throughout the country. He is the agent of the North Pacific Steamship Company in soliciting Chinese passengers to and from China by that line. He was a passenger by the same steamship upon which his wife and daughter arrived. Before going to China he consulted with an attorney in this city, and also saw the collector of customs at this port, with reference to the evidence necessary to secure the landing of his wife and child, and was informed that a certificate issued out of the registrar general's office at the port of Hongkong, that being the port of his intended departure, visaed by the American consul, would accomplish such object. In accordance with this advice Lee Lung procured certificates issued out of the office of the registrar general at Hongkong, and under the seal of that office, visaed by the American consul general at that port, as required by law, which certificates in all respects conform to the requirements of the act of Congress, and which are made by
42 such act *prima facie* evidence of the right of the persons named therein to land in the United States.

It is alleged in the petition for the writ that the collector of customs at this port disregarded the evidence thus provided, and, without authority of law, refused to permit Li Tom Shi and Li A Tsoi to land; that he made no decision such as the law contemplates shall be made, and that his acts as aforesaid, in ignoring the certificates issued out of the registrar's office at the port of Hongkong, were wrongful and unlawful, and in violation of the rights of the petitioner's wife and daughter aforesaid, under the provisions of the treaty of the United States with the Chinese government, and that the appeal taken by the petitioner to the Secretary of the Treasury was not heard or passed upon by that officer, but that there was a pretended decision in respect thereto by one W. S. Chance, a special agent of the Treasury Department.

The collector of customs in his return to the writ alleges that the

certificates in question were not in conformity with the laws of the United States, by reason of the fact that they were not signed by the registrar general at Hongkong, the person in authority there, but were signed by one F. A. May, who is alleged to be the captain general of police at that port. He further alleges that said certificates were duly considered by him, and that he took other testimony as to the right of the persons named in the petition to land, and decided adversely thereto, and that petitioner's appeal from such decision was heard and adversely decided by O. L. Spaulding, Assistant Secretary of the Treasury.

In the case of Way Tai, 96 Federal, 484, it was held in this court, by Judge Gilbert, on the authority of decisions by the Supreme Court of the United States, that the collector is not required to conform his proceedings to what is known as due process of law; that the collector of customs is not required to take any testimony at all, but to decide as to the right to land upon his own inspection and examination, and that his decision in respect thereto is final;
43 and such is the effect of the decisions of the Supreme Court cited in that case. By these decisions it is held that "the statute does not require inspectors to take any testimony at all, and allows them to decide on their own inspection and examination the question of the right of any alien immigrant to land." Nishimura Ekiu's case, 142 U. S. 651.

In the earlier case of Gin Fung, decided by the same judge, 89 Federal, 153, the petitioner was discharged upon writ of *habeas corpus*, where it appeared that the collector of customs only heard part of the testimony of one witness, and then left the room, delegating further examination of the witness to one B. F. Jossey, Chinese inspector; that the petitioner presented another witness on the following day, at the office of the collector, where he was met by said inspector, who offered to hear the testimony of the witness presently, but intimated to such witness that he might be arrested for false swearing if he testified as a witness in the proceeding, with the result that the witness was intimidated thereby and refused to testify; that as a matter of fact the steamer had cleared from the port of Portland on the previous evening, on her way to China, taking the petitioner with her. Upon appeal to the circuit court of appeals, this case was reversed, and it is held in effect that the court is without jurisdiction to discharge, upon writ of *habeas corpus*, where the collector undertakes to deport a petitioner without a hearing, or pending a hearing; that the power of the court might be properly exerted in such case to arrest the consequences of the collector's illegal act, but that it could go no further. 100 Fed., 389. It is not clear as to what is meant by jurisdiction in the courts to "arrest the consequences of the collector's illegal act." If the court is without jurisdiction to inquire, upon writ of *habeas corpus*, as to the legality of the petitioner's detention under such circumstances, it is without any jurisdiction whatever in the premises. So far as I am advised, there is no power in the courts to control
44 the action of the collector of customs as suggested. These cases establish the doctrine that the collector of customs, in

determining the right of Chinese persons to land, may act upon his own information and discretion, and that such action, however taken, is conclusive of the matter, subject to the right of appeal to the Secretary of the Treasury; that his decision, if he decides not to hear testimony, or not to give effect to evidence which the laws of Congress have provided shall be sufficient to establish the right to land in the first instance, or decides not to decide, is conclusive. Under the doctrine of these cases, it is immaterial, so far as the jurisdiction of this court is concerned, whether the petitioner's appeal to the Secretary of the Treasury is heard by the Secretary in person or by a subordinate official in his department or is heard at all.

The petition for the writ is dismissed.

Filed May 12, 1900.

E. D. McKEE, *Clerk.*

45 And afterwards, to wit, on the 21st day of September 1900 there was duly filed in said court, a petition for appeal and assignment of errors, in words and figures as follows, to wit:

46 *Petition for Appeal.*

In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child.

Now comes Lee Lung, conceiving himself aggrieved by the order, judgment and decree made and entered on or about the 12th day of May A. D. 1900, in the above-entitled cause, — does hereby appeal from said order, judgment and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herein, and he prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order, judgment and decree *was* made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 20th day of September, A. D. 1900.

JOHN H. MITCHELL AND
CHAS. J. SCHNABEL,
Attorney- for said Lee Lung and Petitioner.

Due service of the foregoing petition for appeal, together *of* the assignment of errors, and citation on appeal, herein by copies thereof, all duly certified to is hereby admitted this — day of September, 1900.

JOHN H. HALL,
U. S. Attorney for the District of Oregon and
Attorney for I. L. Patterson, Collector of
Customs, Port of Portland, Oregon.

Filed September 21, 1900.

E. D. McKEE, *Clerk.*

47 *Assignment of Errors.*

In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child.

Lee Lung, in the above-entitled cause, in connection with his petition for an appeal, makes and assigns the following errors, which he avers occurred upon the hearing and determination of this cause and his application for a writ of *habeas corpus* herein, for and in behalf and for the body of Li Tom Shi, his wife, and upon which he will rely upon appeal to the Supreme Court of the United States of America.

1.

Error of the court in holding that upon the facts set forth in the petition herein,—that the act of Congress approved August 18, 1894, has withdrawn from the jurisdiction of the courts authority to act in the premises or to issue the writ.

2.

Error of the court in dismissing petitioner's application herein.

JOHN H. MITCHELL AND
CHAS. J. SCHNABEL,
Attorneys for Lee Lung and Petitioner.

Filed September 21, 1900.

E. D. McKEE, *Clerk.*

48 And, to wit, on the 26th day of October 1900 there was duly filed in said court, an undertaking on appeal, in words and figures as follows, to wit:

49 & 50 In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi.

Know all men by these presents, that we, Lee Lung, of Portland, Multnomah county, State of Oregon, as principal, and the American Bonding and Trust Company, a corporation organized and existing under the laws of the State of Maryland, and authorized to do the surety business in the State of Oregon, as surety, are held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars ($250.00), to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Whereas the above-named Lee Lung petitioner has appealed to the Supreme Court of the United States to reverse the judgment and decree in the above-entitled cause by the district court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such, that if the above-named Lee Lung shall prosecute said appeal to effect, and answer all costs adjudged against him, if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

In witness whereof, the said principal has hereunto set his hand and seal, and the said surety has caused these presents to be signed by its attorney-in-fact for the State of Oregon, and its corporate seal to be attached this 17th day of October, A. D. 1900.

LEE LUNG. [SEAL.]

THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,

By S. B. LINTHICUM, *Vice-Pres't.*

Attest:

[SEAL.] JAS. McI. WOOD, *Ass't Sec'y.*

Signed, sealed and delivered in presence of:

E. BERIN.

(52 ½ int.-rev. stamps.)

Filed October 26, 1900.

E. D. McKEE, *Clerk.*

51 And, to wit, on Monday, the 24th day of September, 1900, the same being the 70th judicial day of the regular July term of said court; present: the Honorable Charles B. Bellinger, United States district judge presiding, the following proceedings were had in said cause, to wit:

52 *Order Allowing Appeal.*

In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child.

On this 24th day of September, 1900, comes John H. Mitchell and Charles J. Schnabel, attorneys for Lee Lung, the petitioner herein, and present to the court the petition of the said Lee Lung, praying for the allowance of an appeal to the Supreme Court of the United States from the order and decree heretofore entered in this cause, so far as the same relates to Li Tom Shi, wife of said Lee Lung; praying also that a transcript of the record, proceedings and papers on which the judgment, order, and decree *was* herein rendered, duly authenticated, may be sent to the Supreme Court of the United States and such other and further proceedings may be had as may appear proper in the premises.

On consideration whereof, it is ordered that an appeal be allowed as prayed for.

CHARLES B. BELLINGER, *Judge.*

Filed September 24, 1900.

E. D. McKEE, *Clerk.*

53 And afterwards, to wit, on the 6th day of July, 1900, there was duly filed in said court testimony taken before the court upon the hearing in words and figures as follows, to wit:

54 LEE HONG, sworn on behalf of the petitioner.

Direct examination.

Questions by Senator MITCHELL:

State your name, age and occupation.
A. Lee Hong; merchant.
Q. Where were you born?
A. In China.
Q. How long did you live in China?
A. Since sixteen years old, I was come over to Portland.
Q. Came away when you were sixteen years old?
A. Yes, sir.
Q. Have you been back there several times since?
A. One time.
Q. How long did you remain then?
A. Remain in China?
Q. Yes.
A. About three years; between two and three years.
Q. What was your age then, about?
A. Well, at that time I was 23 or 24.
Q. State whether you are a married man, or single?
A. I am a married man.
Q. Where were you married?
A. In China.
Q. When?
A. When I was twenty-one years old.
Q. Now state to the court, if you know, what is the usage in China—what does it take, under the usage in China, to constitute a marriage?

Mr. HALL: May it please the court, I desire at this time to enter an objection to this testimony, or any testimony for the purpose of here determining the facts that must, necessarily, have been determined by the collector of customs. And this question leads up to that point directly. They propose here at this time to show that the conclusion upon the question of fact by the collector of customs was an erroneous one. This court has held uniformly, particularly in the case of Wai Ti, settled last summer, that this court would not, and could not, review upon *habeas corpus* the action
55 of the collector of customs, and also indicated that if the collector of customs had not done his duty, the only thing this court could or would do, if that was shown, would be to direct him to proceed. The circuit court of appeals, in the case of Gin Fung, which reversed Judge Gilbert in this district, followed this court in that view, and stated that the decision of Judge Gilbert in holding that the Chinaman should be discharged was too broad, and that the only power that the court had, the only jurisdiction it

had, was to determine whether or not this man had had a hearing such as the law contemplates; whether or not he had had an opportunity to present witnesses before the collector of customs, and a determination there had. But the object of this testimony is to retry before this court the question of fact which the collector of customs himself tried out, and that, we claim, is wholly incompetent.

COURT: The testimony may be admitted subject to your objection.

Mr. HALL: Save an exception.

COURT: I do not hold that this testimony is competent. I will admit it subject to the objection.

Mr. HALL: The objection will be considered as to the testimony right along.

COURT: Yes, it may all be considered objected to.

A. In Chinese law, in Chinese customs, when people going to marry, they engage the girl first; some engage by his parents, some introduced by his friends, or himself. After they get engagement already made, then they fix up the date of when they are going to be wedding. When they going to fix up the date of wedding, well, they going to tell all his friends and all his relations to come to attend the wedding on the date of wedding; and then on
56 the date all friends come to the house.

Q. Whose house?

A. The bridegroom's house. And then in the bridegroom's house they all come to the house; until the bride comes to the bridegroom's house, they all stand in the house to receive the bride; and then they pay a visit to everybody.

Q. How does she come?

A. The bride come on a kind of sedan chair, decorated with flowers and everything.

Q. Is that an ordinary chair, or is it known as a wedding chair?

A. It is a wedding chair, different from the usual chair; all decorated, and covered with flower-, and covered with red silk.

Q. Is that chair carried, or how?

A. Carried by two men.

Q. From the bride's house to the groom's house?

A. Yes, sir.

Q. Is that such a chair as, going through the streets, everybody would know it meant a wedding?

A. Oh, yes, anybody see it on the street, they would know the party was going to a wedding.

Q. How?

A. Because they can tell that kind of sedan chair, decorated, entirely different from the usual chair.

Q. How about the bride? Is she decorated differently?

A. Yes, the bride has kind of wedding gown, in red color, so that the reason to show the good luck, the Chinese custom of red, the good luck. So the bride wear the red color of the wedding gown.

Q. Two men carry her in this wedding chair, this sedan chair. Is she accompanied by any lady friends?

A. Yes. Bridemaids go along.
Q. They walk, do they?
A. Yes, the bridemaids walk; they walk beside.
57 Q. When they get to the groom's house, is he dressed any differently from ordinary?
A. The bridegroom?
Q. Yes.
A. Yes, he different.
Q. How?
A. They generally get a silk long coat, and different cap entirely, different from the usual wear.
Q. When she comes there, then he receives her, and introduces her to his friends?
A. Yes, when the bride comes to the bridegroom's house, they pay respectful to the bridegroom, and then they send big, long firecracker, you know.
Q. What else do they do?
A. After they go in the bridegroom's house to pay respect to her husband, then the husband receive her, and take her into the big room, the big parlor, you know, and introduce to all friends, and then they call to everybody, call all over every one friends.
Q. Do they have anything to eat?
A. All through that night until the next day, then they go invite friends to dinner, friends and relations.
Q. And have a wedding dinner?
A. Have a wedding dinner.
Q. And then they are married?
A. Then they are married.
Q. That constitutes the wedding?
A. That constitutes the Chinese marriage.
Q. You have no certificate, no papers issued?
A. No.
Q. No priest?
A. No, no; no minister, no preachers.

Cross-examination.

Questions by Mr. HALL:

You say you were married first when you were 23?
A. No, 21. I am not the petitioner. I am Lee Hong.

Excused.

58 LEE LUNG sworn on behalf of the petitioner.

Direct examination.

Questions by Senator MITCHELL:

State your name, age, residence and occupation.
A. Lee Lung; Kwong Sang Wo Company, 143 Second street, Portland, Oregon. Age 34.
Q. Where were you born?

A. In Canton, China.
Q. When did you leave Canton for America, first?
A. The very first I come here about thirteen years old.
Q. You have been here, then, except when you were away temporarily, have you, about twenty years?
A. Yes.
Q. What is your business?
A. I am in Portland.
Q. What do you do? What is your business? Are you a laborer?
A. No, store.
Q. Merchant?
A. Merchant.
Q. How many times have you returned to China since you came here?
A. Three times I return to China.
Q. About when did you go back first?
A. First time stay about five or six years. About eighteen years go to China.
Q. When you were eighteen years old?
A. Yes, eighteen years old.
Q. How long did you remain there that time?
A. Stay that time in China about one year.
Q. When did you go back the second time?
A. The second time I go back twenty-two year.
Q. You mean when you were twenty-two years old?
A. Yes, twenty-two years old.
Q. How long did you stay then?
A. That time stay in China about three years.
59 Q. Went back when you were about twenty-two and remained till you were twenty-four?
A. Yes. No, come back again twenty-five.
Q. When did you leave here the last time to go back to China?
A. The last time thirty-two years old.
Q. When was it? Can you tell what month it was? What year? Last September, was it, or October?
A. September, or October.
Q. October?
A. Yes.
Q. 1898?
A. Yes, sir.
Q. A year ago last October?
A. Yes.
Q. And you returned on the Monmouthshire, did you, recently?
A. Yes.
Q. I will ask you who this lady is?
A. That is my wife.

Mr. HALL: The same objection, your honor, to this witness' testimony.
COURT: Yes.

Q. Who is this little lady?
A. That is my daughter.
Q. State when and where you were married to your wife. About when were you married to your wife—how long ago?
A. I go to China now about sixteen months.
Q. About how long ago was it you married your wife?
A. Last time?
Q. How many months ago, how long ago? How long have you been married?
A. How long been married to that wife?
Q. Yes.
A. Over a year now.
Q. Where were you married?
A. In China.
Q. What part of China?
A. Canton.
Q. State how you were married, what took place.
A. I married, and my friends introduced me, and go see mother, say he is married this girl; girl likee and I likee, and just
60 talking over, it is married.
Q. Your friend, you say, went to her mother?
A. Yes.
Q. And arranged it?
A. Yes.
Q. Did you have an engagement?
A. Yes.
Q. How long was that before the marriage?
A. Not very long; about a couple of weeks.
Q. A couple of weeks before?
A. Yes.
Q. Were any presents then passed between you?
A. Yes, some gold jewelry, before we were married.
Q. Is that the custom in China, when persons are engaged, to pass presents?
A. Yes.
Q. State whether there was a day fixed for the wedding; if you agreed some days before, what day you would be married.
A. What day?
Q. Yes.

Mr. HALL: How do you claim this is material?
Mr. MITCHELL: I want to show it is according to custom there; that is all.

Q. State what took place the day of the marriage. What did your wife do? What did you do?
A. When marry that time, my father get wedding chair, and he get everything, and everything take out to my house, and after he get wedding chair two men carry it, come into my house.
Q. She came in a chair?
A. Yes.
Q. Did somebody carry the chair?

A. Yes.
Q. How was the chair decorated?
A. The chair different; get silk, and have flower; everything fixed; different kind of chairs.
Q. Is it known as a wedding chair?
A. Yes; all different.
Q. How is it different?
A. Well, different; he get flower, and he get all silk, and put it outside.
61 Q. What color?
A. Pretty near all red.
Q. How was she dressed—differently too?
A. Marry, come into my house that time, red coat.
Q. How were you dressed, differently?
A. Yes, I dressed red cap and long coat, and differently?
Q. Is that a wedding garment in China?
A. Yes.
Q. She came to your house and you received her there?
A. Yes.
Q. Your friends there?
A. Yes.
Q. Were your friends and relatives there at the house?
A. Yes.
Q. State what else took place?
A. Come in the house that time, and all friends shoot firecrackers, and my wife come in the house, and my wife bring friends, and tea, and sit there; take a little cake, talk there, have a little fun; after a while friends go home.
Q. Have any dinner?
A. Well, dinner is the next day.
Q. I will ask you whether you had resided in the colony of Hongkong before you came on here, you and your wife?
A. What do you mean?
Q. Where did you live before you came here—live in Hongkong?
A. Yes.
Q. About how long?
A. Live about a year.
Q. That is after you were married?
A. Yes.
Q. Did you live with this woman there?
A. Yes.
Q. Did you have the daughter with you?
A. Yes.
Q. She was with you there in Hongkong?
A. Yes.
Q. I will ask you if you went with your wife and daughter to the office of the registrar general to get a certificate.
A. I bring my wife and daughter, go to the registrar general's office, and I ask him, "I want to go back to United States." He tell me, "If you go, you get a picture." At that time I hadn't
62 a picture yet. At that time he told me to get a picture.

I go and get a picture; about two day the picture ready, and I bring it to the registrar general's office, and he fix that paper, and next day he give me the paper, three paper, one he wrote up all ready fixed, and two blank. He told me to bring up, write just the same; and next day I got a friend, I got my partner this paper, and I brought it to the registrar general's office, and he fix it all right.

Q. At the registrar general's office?

A. Yes.

Q. Were the seals put on there?

A. Yes. The seals this office, and next day I bring it to the United States consul.

Q. He put his seal on there?

A. Yes, and he write that name.

Q. On both of them?

A. Yes; he give it to me.

Q. What is the fee for these certificates—the colonial fee?

A. $50 China money, each.

Q. $50 in silver?

A. Yes.

Q. About $25 in gold?

A. Yes.

Q. You paid that, did you, to the registrar general?

A. Yes.

Q. $50 in gold for the two?

A. Yes, sir.

Q. You paid the consul general how much for his fee?

A. $1.00 in gold.

Q. I will ask you, when you left here if you made provision in order to bring back a wife with you?

A. Yes.

Q. Did you go and see anybody about it—any attorney?

Mr. HALL: Objected to; the attorney is the best evidence.

COURT: You may answer the question, subject to the objection.

Mr. HALL: Save an exception.

Q. State if, before you went away, you went to see your attorney here, Mr. Schnabel?

A. Yes.

63 Q. In order to find out what was necessary to do?

Mr. HALL: Those questions are leading, as well.

Q. State what you did. When you went to see Mr. Schnabel where did you go?

A. I told Schnabel to make out the certificate before I go, you mean?

Q. Yes. Did you go to see the collector with Mr. Schnabel?

A. Go to China that time?

Q. Did you go with Mr. Schnabel to see the collector, Mr. Patterson, before you went away, to see what was necessary?

A. I think I go see him before I go, and he not say much.

Q. You went to see your counsel, and you was governed by what he said? You did as he said?

A. What?

Q. You did what he advised you to do, did you?

A. You mean I come back that time?

Q. Before you went away you got a certificate?

Mr. HALL: I object to that suggestion to the witness. Ask him what he did.

Q. You got a certificate before you went back to China, did you?

Objected to as leading.

A. Yes.

COURT: It is not material about the form. You may answer the question.

A. I go away that time, I make out the certificate, one leave in the custom-house.

Q. You brought your wife back with you, did you, on the Monmouthshire?

A. Yes.

Q. And the child?

A. Yes, sir.

Q. These are the same persons whose pictures are in the certificates?

A. Yes.

Q. You intend to live with her as your wife here, and have
64 your child live with you?

A. Yes.

Q. You had no counsel at the time you had a hearing before the collector when you came back, had you?

A. No attorney.

Q. Mr. Patterson admitted you when you came back?

A. Yes.

Q. But he didn't admit your wife and daughter? You had no counsel there, no lawyer?

A. No, no lawyer.

Q. Why didn't you have a lawyer?

A. Everything fixed all right, no trouble. You see I fixed paper coming Hongkong; I got paper before I go to China to bring my wife and daughter; no trouble, you see. If I know there was any trouble, I would get a lawyer.

Q. How old is your little daughter?

A. Ten years old.

Q. How old is your wife?

A. Twenty-one.

Cross-examination.

Questions by Mr. HALL:

This daughter—where is her mother?

A. She is married in China.

Q. Is she your wife now? You got two wife now?
A. Yes.
Q. One wife in China, your first wife?
A. Yes.
Q. The mother of this little girl?
A. Yes.
Q. Where does she live—the little girl's mother?
Objected to.
Testimony admitted subject to the objection.
Q. Where does the little girl's mother live?
A. In China.
Q. Whereabouts?
A. In Canton.
Q. You were married in Canton?
A. Yes.
Q. Where did you live when you were married?
A. I married that time, I live in Canton.
Q. The same house with your other wife?
65 A. No, different house.
Q. Didn't you live with the other wife?
A. My other first wife was different place, different city.
Q. You go there and live by and by, didn't you?
A. I married first time in Canton, and after a while go over the other place.
Q. And both wives live in the same house?
A. Yes.
Q. All together?
A. Yes.
Q. How long did you live that way? How long did you and your two wives live in that place?
A. About a month.
Q. How far is that place from Canton?
A. From Canton, go my old place?
Q. Yes.
A. Oh, I guess about—take steamer go about two days.
Q. It takes about two days to go?
A. Yes.
Q. How long does it take to go from Canton to Hongkong?
A. I think about one hundred miles.
Q. You think it is about one hundred miles away?
A. Yes.
Q. Then you were married in Canton?
A. Yes.
Q. And went over to this other place? What is the name of this other place?
A. Chin Nin.
Q. You were married in Canton, and lived there how long?
A. Lived Canton about over a month.
Q. Then you went over to Chin Nin?
A. Yes.

Q. Lived there?
A. Yes, about a month.
Q. Then you went to Hongkong?
A. Yes.
Q. How long did you live at Hongkong?
A. Oh, about a year, I think.
Q. Then after you lived there about a year, you went up before somebody there to get a paper to bring your wife to the United States?
66 A. I go and get paper myself.
Q. You go and get paper yourself? You no take the wife?
A. Well, I take the wife too.
Q. Whom did you take with you when you went up there?
A. Hongkong?
Q. Yes.
A. My partner.
Q. How long had your partner lived in Hongkong?
A. A long time. My wife and daughter, all together, go to the registrar general's office.
Q. And he gave you a paper, you paid him $50?
A. Yes.
Q. And he gave you a paper?
A. Yes.
Q. Your other wife: does she live in China now?
A. Yes.
Q. The little girl's mother?
A. Yes.

Redirect examination:

Q. What is the law and usage in China in regard to having more than one wife?
A. In China?
Q. Yes. How many wives can a man have if he wants to?
A. In China a rich man can have as many wives as he wants.

Excused.

67 LEE HUNG recalled on behalf of the petitioner.

Direct examination.

Questions by Mr. MITCHELL:

State what is the usage and law in China in regard to the number of wives a man may have.

Mr. HALL: Objected to; he has not shown himself as competent.

Q. Do you know what the law is, and usage and custom?
A. Yes.
Q. What is it?

(Mr. HALL:)

Q. Are you a lawyer?
A. No, sir, I am not a lawyer.

COURT: I do not think it will be necessary to be technical about this.

Mr. HALL: You might ask him what the custom is. I don't think he is qualified to tell what the law is.

Q. Well, what is the custom?
A. Well, I understand the China law got nothing against for two or three wives. If a man want to marry two or three wife, if they can get money enough to support it, they can have it. The rich people and some of the high officer they get two or three or four; you can't tell. In our law in China they got nothing against for the wives.

Excused.

68 CHARLES J. SCHNABEL, sworn on behalf of the petitioner.

Direct examination.

Questions by Mr. MITCHELL:

Mr. Schnabel, you may state your business.
A. Occupation, attorney-at-law.
Q. State if you have been the adviser of the petitioner in this case heretofore?
A. I have.
Q. If so, state for about what length of time—the legal adviser, I mean.
A. I have; since about the summer of 1898.
Q. I will ask you what he did. State what occurred in reference to an application to you about his going away—what it was necessary to do, etc.
A. He came to me some time, I should judge, in the middle of the summer—July or August, 1898, and stated that he was trying to arrange his affairs—I might state he is president of the Bow Yuen Company and also a member of the firm of Kwong Sang Wa Company—he stated he was arranging his business affairs to go back to China, and he says "Some time before, now, in the fall, I would like to have you go to the collector or look up the law and find out just exactly what must be done in order that I may return without any trouble and bring with me my family, my wife and daughter." So I called upon Collector Patterson, the present incumbent, and talked over the matter with him, and I saw that his ideas and my ideas on the interpretation of the laws and rules were the same. Later on he came in, and he says, "Well, I have arranged my business affairs and I am going on the steamer that sails in October." So I remember of drawing up a paper in which he made those statements, the same paper that was introduced before the collector this last time. Those certificates were signed by Mr. J. F. Watson, of the Mer-

chants' national bank; Mr. R. M. Dooly; I think Mr. Wm.
69 M. Ladd; Colonel Beebe; I think George Taylor; well, some of the very best men in the city. I know that, because we told him we wanted nothing but that. Then I heard from him indirectly in China.

Mr. HALL: Object to what you heard indirectly; it is not competent.

A. In pursuance to a request I called upon Collector Patterson during the month of January of this year.

Q. While he was in Hongkong?

A. Yes. Stating that Lee Lung was about to return to this country with his family, and he had requested me to call upon the collector to see if any change had taken place in the rules, regulations or laws governing the return of merchants and their families, and what was necessary to be done by him before taking the boat for this country. I went down and saw the collector, talked with him, and he says, "He has a certificate as regards his own standing, and as regards the family, have him go to the registrar general in Hongkong." He says "In that case, he is to go to the registrar general of the British colony at Hongkong, and then have him go before our consul general, or consul." Words to that effect. I came back, and I think I wrote out the substance.

Mr. HALL: A copy of the letter would be the best evidence.

A. I am not sure whether I did, or whether I just made an oral statement to the president of his firm, Mr. Lee Hung, which information I was told was to be sent to Lee Lung. And I saw a cable from him, dated March 5th I believe, stating that he had——

Mr. HALL: Object to that; the cable is the best evidence.

Q. He complied then with all your instructions as his adviser, did he?

A. Yes, and instructions given us by the laws, and opinions of the Attorney General, and also the collector of customs.

70 Mr. HALL: What was the matter when this man got here? Why didn't he admit him?

Mr. HALL: He did admit him.

COURT; Why didn't he admit the family on those evidences required by law?

A. I might state, if the court please, that neither Lee Lung nor any one thought it was necessary to have him represented by counsel, because he says "Case too plain; case too plain; never mind, Mr. Schnabel, taking up your time." Consequently we did not bother about any examination, and there was no counsel present. He didn't ask for any; didn't want any. In fact, there wasn't any need for any.

Cross-examination.

Questions by Mr. HALL:

There had been every facility for appearing there before Mr. Patterson?
A. Yes, sir.
Q. He treated you very nicely?
A. Yes.

Excused.

71 LI TOM SHI sworn on behalf of the petitioner.

Lee Hong sworn as interpreter.

Direct examination.

Questions by Mr. MITCHELL:

Ask her where she was born.
A. Canton.
Q. Ask her her name?
A. Li Tom Shi.
Q. How old is she?
A. Twenty-one.
Q. Ask her who this is?
A. She says her husband.

Mr. HALL: I object to this testimony.
COURT: Yes, it will go in subject to the objection.

Q. Ask her when she was married to him?
A. She says she married her husband about sixteen months ago.
Q. Where?
A. Canton city.
Q. Canton, China?
A. Yes, Canton, China.
Q. Ask her how they were married; what did they do?
A. Introduced her by friends, and tell her mother, and then she go and marry this gentleman.
Q. What did she do the day of the wedding? What was done? How did they act?
A. She said she sat on sedan chair, with decorated.
Q. Went to his house?
A. Yes, sir.
Q. What took place there at the house?
A. She said when she get her husband's house, then they introduced to all the friends, and then have tea and little China cakes, to pay respect to every one of friends and relations.
Q. Have firecrackers?
A. Yes.
Q. Any dinner?
A. Next day dinner.
Q. State where they lived. Ask her whether she went to live at Hongkong.

A. She said she lived in Hongkong with her husband about a year.

72 Q. With this gentleman—with this husband?

A. Yes, sir.

Q. Did this little girl live with you?

A. Yes, sir.

Q. Ask her who that little girl is, if she knows.

A. She says her husband's former wife's child.

Q. About how long were they—a year or more—in Hongkong?

A. She said about a year.

Q. Ask her if she went up to the registrar general's office with her husband and the child to get the certificate.

A. Yes, sir, they go with her husband.

Q. Got their certificates there?

A. Yes, get the certificates.

Q. Ask her if she got any wedding presents—any wedding presents passed.

A. She says her husband presented her jewelry—bracelets and earrings.

Q. That is your picture, is it?

A. Yes, sir.

Q. Is that the little girl's picture there in that certificate, that paper there?

A. Yes, sir.

Q. And the other one—ask her whose picture that is?

A. Herself.

Cross-examination.

Questions by Mr. HALL:

Where were those pictures taken?

A. Hongkong.

Q. How long before you went up to the registrar general's office were the pictures taken?

A. She said——

Q. She didn't say anything. You let her answer, and give me her answer. Don't you answer for her.

A. No, I just answer what her says, you know.

Q. Ask her if she knew anybody in Hongkong?

A. No, sir.

73 Q. Ask her where she first saw this little girl.

A. Sing Nin.

Q. Whereabouts?

A. She said the district of Sing Nin.

Q. At whose house?

A. Her husband's house.

Q. Who else was there?

A. She said her husband's former wife and her boys.

Q. Ask her if they all lived there together.

A. Yes, sir.

Q. How long?

A. About one month.
Q. Did Lee Lung live there with both wives?
A. Yes, sir.

Redirect examination:

Q. Lived in the same house?
A. Yes, sir.

Excused.

Mr. HALL: The only way I can advise your honor is to submit letters from Mr. Spaulding, and let the court compare them.
(Certain letters are here submitted to the court by the counsel for the Government.)

74 LEE LUNG recalled on behalf of the petitioner.

Direct examination.

Questions by Mr. MITCHELL:

I will ask you if that is your picture attached to that?
A. Yes.
Q. Are you the man referred to in these papers?
A. Yes.
Q. Is this your signature Lee Lung?
A. Yes, sir.

Mr. MITCHELL: I will call the attention of the court to that signature.
Mr. HALL: Objected to as incompetent and immaterial, as far as this case is concerned.

Excused.

Mr. HALL: If the court please, I desire in the same connection to introduce a letter from Secretary Gage.
COURT: Very well.
Mr. HALL: It is on the same subject of the powers granted secretaries, together with copies of the ruling.
Mr. MITCHELL: We object to all these papers, on the ground that he cannot delegate his official power.
COURT: I notice that the letter from the department states that the finding of the collector is that these certificates were not signed by the registrar general, but by a policeman May. What evidence is there of that fact?
Mr. MITCHELL: All we have got is the certificate.
Mr. HALL: They are advised of that in the appeal. Mr. Mitchell and Mr. Schnabel set out in their appeal which they sent on to the Secretary of the Treasury the fact that Mr. May was a prefect of police there, but is not the registrar general.
75 COURT: How comes he to exercise those functions?
Mr. HALL: We haven't any idea. The Government of the United States does not recognize any one except the registrar general at Hongkong.

Mr. MITCHELL: The statute does not say one word about the registrar general. The Attorney General says the certificate of the registrar general will be accepted. We claim, in this case, as it has the seal of that office, the presumption follows that it was executed by the authority of the Government.

76 PORTLAND, OREGON, *Oct.* 6, 1897.

Messrs. Dodwell, Carlill & Co., agents Northern Pacific Steamship Co.

GENTLEMEN: The undersigned, Lee Lung, Chinese merchant residing at the city of Portland, Oregon, by this asks the agency of your company as solicitor for Chinese passengers to and from China via the Northern Pacific Steamship Co. line of which you are agents. I have resided and been engaged as a Chinese merchant in the city of Portland for fifteen years and am able to speak the English language fluently and to write the same fairly well. That for the last ten years I have been a partner in the Chinese firm of Kwong Sang Wa Co., doing business at No. 143 Second street in the city of Portland, Oregon. That I also own an interest and am a partner in other firms:

Bow Yuen Co. 129 Second street, Portland, Oregon.
Kwong On Chung Co., Astoria, Oregon.
Hop Lung Co. No. 103 Park avenue, Baltimore, Md.
Quong Yuen Shing Co. No. 5 Mott St., New York city, N. Y.
Kam Sang Yuen Co. No. 50 Bonham strand, Hongkong, China.
Tai Lun Co. No. 96 Jervais St. Hongkong, China.
Wing Chong Loong, 128 Praya West Hongkong.
Tai Yick, 31 Bonham West, Hongkong.

That in addition to the business interests above set forth I have an extensive acquaintance among the Chinese residents in the different portions of the United States, and in the event I should succeed in having your agency as above suggested feel assured that I should be able to exert a favorable influence on the Chinese passenger traffic by your line between Portland and Hongkong as well
77 in the United States as in China through my Hongkong connections.

Very respectfully yours, LEE LUNG.

(Photograph.)

Oregonian, October 28th, 1897.

Secured it by petition.—Lee Lung, manager of the Kwong Sang Wa Company's store, on Second street, has been appointed agent of the new line of steamers plying between Portland and the Orient, to attend the Chinese passenger business. There were a number of applicants for the position among the Chinese merchants, but Lee Lung was given the preference. To secure the coveted honor Lee took advantage of his observations in Portland, and his knowledge of the potency of a petition. He got one up in good style, a yard long, and the number of his recommendations must have over-

powered the general agent of the line and secured for him the place.

Oregonian, October 29, 1897.

Chinese will return.—The Chinese merchants of the city are generally well satisfied with the appointment of Lee Lung, of the Kwong Sang Wa Company, as Chinese passenger agent of the new line of Oriental steamers. A number of Chinese in Portland are preparing to return to their native land, and in consequence there is great rivalry between the Chinese agents, acting for the three different lines, to sell tickets to their departing countrymen. The Braemar will likely take out quite a number.

78 PORTLAND, OREGON, *October 6th*, 1897.

To whom it may concern:

This is to certify that Lee Lung is a Chinese merchant residing in the city of Portland, State of Oregon, being one of the principal members of the Kwong Sang Wa Company and Bow Yuen Co., two of the leading Chinese merchant firms in said city; that he is a reliable Chinese merchant, and one who speaks the English language with considerable fluency; that he is the agent of the Northern Pacific Steamship Company for the purpose of attending to the Chinese passenger business thereof, and is traveling in the interest of said steamship company throughout the United States. This statement or certificate is made in order that said Lee Lung shall have this written evidence of his character and business, so that he be not in any way molested, restricted or interfered with in looking after said business.

79 We the undersigned citizens of Oregon, residing at the city of Portland, certify that we are acquainted with Lee Lung, a merchant of the firm of Kwong Sang Wa Co. No. 143 Second street in said city, and know him to be a reliable Chinese merchant, and one who speaks the English language with considerable fluency. That he is a very active and energetic person, and would consider him well qualified to act in any capacity, where an influence among the Chinese people was requisite.

We have known him for the time indicated with our signatures hereunto.

Name.	Occupation.	Length of time have known Lee Lung.
R. M. Dooly.....	Cash'r W. F. & Co.'s bk., Portland.	Over two years.
Tyler Woodward.....	Pres. U. S. nat. bank, Portland.	About four years.
F. C. Miller	Cash'r U. S. nat. bank	Five years.
R. L. Durham	Vice-p't Merch. nat. bk....	Six years.
Theo. B. Wilcox	Pt. Port. Flg. Mills Co.....	10/12 yrs.
Chas. E. Ladd	Of Ladd & Tilton.....	10/12 years.
L. A. Lewis.....	Of Allen & Lewis.....	Some time.

Julius C. Lang.....	Of Lang & Co.....	Seven years.
Fred. H. Rothchild...	Pres't of Rothchild Bros...	Two years.
W. J. Van Schuyver..	Pres't of W. J. Van Schuyver Co.	Ten years.
Eugene Shelby	Agent Wells, Fargo & Co.'s Exp.	Twelve years.
W. T. Harlow	Ag't N. P. Express Co.....	Fourteen years.
Chas. F. Beebe.....	The Chas. F. Beebe Company.	Three years.
Roderick L. Macleay..	Corbitt & Macleay Co.....	Two years.

80 We the undersigned citizens of Oregon, residing at the city of Portland, certify that we are acquainted with Lee Lung, a merchant of the firm of Kwong Sang Wa Co. 143 Second street in said city, and know him to be a reliable Chinese merchant, and one who speaks the English language with considerable fluency. That he is a very active and energetic person, and would consider him well qualified to act in any capacity, where an influence among the Chinese people was requisite.

We have known him for the time indicate- with our signatures hereunto.

Name.	Occupation.	Length of time known Lee Lung.
James S. Reed.....	Gen'l ins'ce agency.....	Ten years.
H. C. Wortman.....	Sec'y Olds & King.....	14 years.
Taylor, Young & Co..	Ship brokers.....	5 years.
Jas. R. McCraken.....	Sec'y The J. McCraken Co..	10 years.
Geo. W. Hahn.....	Hahn's.....	5 years.
Sylvester Farrell.....	Everding & Farrell.....	8 years.
T. N. Stoppenbach....	Sec'y Pacific Paper Co.....	4 years.
Napoleon Davis.....	Pres't Columbia Telephone Co.	2 years.
P. J. Barry.....	Chief of police.....	7 years.
J. H. Kelly.....	Ch'f clerk Ainsworth dock..	3 years.
Fred'k V. Holman....	Lawyer.....	1 year.
Warren E. Thomas...	Lawyer.....	2 years.
J. W. Whalley.....	Lawyer.....	8 years.
John Kelly.....	General insurance.....	12 years.

81 We the undersigned citizens of Oregon, residing at the city of Portland, certify that we are acquainted with Lee Lung, a merchant of the firm of Kwong Sang Wa Co. 143 Second street in said city, and know him to be a reliable Chinese merchant, and one who speaks the English language with considerable fluency. That he is a very active and energetic person, and would consider him well qualified to act in any capacity, where an influence among the Chinese people was requisite.

We have known him for the time indicated with our signatures hereunto.

Name.	Occupation.	Length of time known Lee Lung.
Edw. Cookingham.....	With Ladd & Tilton.....	5 years.
B. E. Lippincott.....	Customs broker.....	10 years.
W. E. Pulliam...	Deputy collector of customs.	4 years.
Sol Rosenfeld.....	President Rosenfeld-Smith Co.	8 yrs.
John R. Swinton.....	Insurance.....	7 yrs.
U. K. Arnold.....	Insurance.....	9 years.
R. J. Hendrie.....	Book-keeper estate of Frank Dekum.	12 years.
M. C. Harrison.....	Marine adjuster.....	Four years.
W. Hearn.....	M'g'r Postal Telegraph Co.	Seven years.
George P. Dekum.....	Rec. teller Wells, Fargo & Co. bank.	Eight years.
W. W. Peaslee.....	Peaslee Bros. Co., printers..	Five years.
Leo Peterson.....	Editor Commercial Review, newspaper.	Three years.
Chas. J. Schnabel.....	Attorney-at-law.....	5 years.

82 We the undersigned citizens of Oregon, residing in the city of Portland, certify that we are acquainted with Lee Lung, a merchant of the firm of Kwong Sang Wa Co. No. 143 Second street in said city, and know him to be a reliable Chinese merchant, and one who speaks the English language with considerable fluency. That he is a very active and energetic person, and would consider him well qualified to act in any capacity, where an influence among the Chinese people was requisite.

We have known him for the time indicated with our signatures hereunto.

Name.	Occupation.	Length of time have known Lee Lung.
C. W. Knowles.....	Hotel-keeper.....	Two years.
J. Frank Watson.....	Pres. Merchants' nat'l bank.	About five years.
J. C. Robinson.....	Manager Turner Flouring Mills Co.	About eight years.
D. D. Oliphant.....	Pres. Oregon & Wash. Flour Co'y.	
J. Frank Davis	Dep. coll. int. rev.....	10 years.
C. E. S. Wood.....	Att'y-at-law.....	About ten years.
W. A. Holt.....	Paying teller W. F. & Co. b'k.	About seven years.
Geo. D. Schalk.....	Pass. ag't O. R. & N. Co...	About six years.
Irving Sayford	The Oregonian.....	

83 We the undersigned Chinese merchants residing and doing business at the places indicated with our signatures hereunto are well acquainted with Lee Lung of the firm of Kwong Sang Wa Co. of the city of Portland, Oregon, and believe he is able through his business connections and acquaintance *and* with the Chinese residents in various parts of the United States to exert a large influence in the direction of the outgoing and incoming Chinese passengers to and from China; that he is thoroughly reliable as a business man and is able to give abundant security for the faithful performance of any agency or duty he may undertake.

Names.	Number.	Street.
Bow Yuen Co	129	Second St.
Kwong Sang Wa & Co	143	Second St.
On Chong Wa & Co	140	Second St.
On Hing Co	66	Second St.
Kim Sun Low	61	Second St., upstairs.
Tie Hing Co	242	Alder St.
Chim Sang Tong	145	Second St.
Guen Wah & Co	247	Alder Street.
Hong Fook Tong	142	Second street.
Bow Lun Co	135	Second street.
Kwong Tai Co	129	Second street.
She Lee Wa	63	Second street.
Gim Wing Co	246	Alder St.
Sang Lung Co	245	Alder street.

Filed July 6, 1900.

E. D. McKEE, *Clerk.*

84 UNITED STATES OF AMERICA, *District of Oregon*, } ss:

I, E. D. McKee, clerk of the district court of the United States for the district of Oregon, do hereby certify that the foregoing pages, numbered from 3 to 83 inclusive, contain a full, true, and correct transcript of all the papers, exhibits, depositions and other proceedings, as the same appear of record and on file at my office and in my custody, in the matter of the application of Lee Lung, for a writ of *habeas corpus* as to Li Tom Shi and Li A Tsoi, his wife and child, in which proceeding said Lee Lung is appellant, and I. L. Patterson, United States collector of customs for the district of Willamette, is respondent.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Portland, in said district, this 4th day of October, A. D. 1900.

[Seal United States District Court, Oregon.]

E. D. McKEE, *Clerk.*

Endorsed on cover: File No. 17,957. Oregon D. C. U. S. Term No. 189. Lee Lung, appellant, *vs.* I. L. Patterson, collector of customs for the port of Portland, Oregon. Filed November 3, 1900.

No. 189.

Brf. of Mitchell for Appellant.

Office Supreme Court U. S.
FILED
APR 9 1902
JAMES H. MCKENNEY
CLERK

Filed April 9, 1902.

IN THE Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 189.

LEE LUNG, Appellant,

vs.

I. L. PATTERSON, Collector of Customs for the Port of Portland, Oregon.

Appeal from the District Court of the United States for the District of Oregon.

Brief and Argument on Behalf of Petitioner and Appellant.

CHARLES J. SCHNABEL and
JOHN H. MITCHELL,
Attorneys for Appellant.

McGILL & WALLACE, Law Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

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vs.

J. L. PATTERSON, Collector of Customs for the Port of Portland, Oregon.

No. 189.

Appeal from the District Court of the United States for the District of Oregon.

Brief and Argument on Behalf of Petitioner and Appellant.

Statement of the Case.

The facts of this case will be best fully presented to the court by setting out in *haec verbae* the Petition, the Return of the Respondent, the Collector of Customs at Portland, Oregon, the reply to the return, each of which follows here consecutively.

Copy of Petition for Writ of Habeas Corpus.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the District of Oregon.

In the Matter of the Application of LEE LUNG for Writ of Habeas Corpus as to LI TOM SHI and LI A TSOI, his wife and child.

To the Honorable, the District Court of the United States for the District of Oregon:

Your petitioner, Lee Lung, respectfully represents that he is a native born citizen of the Chinese Empire; that he now is and has been for more than twenty years last past a merchant, residing during all the said period of twenty years last past, except when absent on an occasional visit to China, during said time, in the city of Portland, State of Oregon, United States of America, carrying on and doing business therein as a merchant; that he is not and never has been a laborer; that as such merchant he belongs to the exempted classes of Chinese who, under the treaty between the United States of America and the Chinese Empire, and who, under the laws of the United States of America, are entitled to come into and reside and do business as merchants in the United States.

That about the month of October, 1898, your petitioner, Lee Lung, left the United States temporarily and went on a visit to Canton, China; that your petitioner returned to the United States on the ship *Monmouthshire*, arriving at the port of Portland, State of Oregon, United States of America, on the 3d day of April, 1900; that on your petitioner's return to the United States he was promptly permitted to land by Hon. I. L. Patterson,

Collector of Customs at the port of Portland, in the District of the Willamette, as a Chinese merchant; that his right to land as a Chinese merchant was duly recognized by said Collector of Customs.

Your petitioner further represents that he has a wife, whose name is Li Tom Shi, and that he has a daughter, now in the tenth year of her age, whose name is Li A Tsoi.

Your petitioner further represents that on his return to the United States from China on the ship *Monmouthshire*, as aforesaid, your petitioner brought with him from China on said vessel, his said wife, Li Tom Shi, and his said daughter, Li A Tsoi, both of whom came with your petitioner as his family in said ship *Monmouthshire*, arriving at the port of Portland, Oregon, in the United States of America, on the 3d day of April, 1900, as aforesaid.

Your petitioner further represents that said I. L. Patterson, Collector of Customs, aforesaid, at the port of Portland, Oregon, on the 7th day of April, 1900, and without having any power or jurisdiction whatever to make any examination, except as to the certificates hereinafter referred to, made a pretended and partial examination, but no such examination as the law contemplates should be made in such cases, of the right of said Li Tom Shi and Li A Tsoi, wife and daughter of your petitioner, as aforesaid, to enter into and remain in the United States, as the wife and daughter of your petitioner, and then and there, to wit, on April 7, 1900, made what purports to be, but what in fact is not a decision such as the law contemplates should be made in any Chinese case wherein such Collector has jurisdiction to inquire and decide. But your petitioner avers that said Collector of Customs I. L. Patterson, had, by reason of the existence and legal operation and effect of Article III of the treaty between the United States of America

and the Empire of China, ratifications of which were exchanged at Washington, December 7, 1894, no jurisdiction or power whatever to inquire into or decide on testimony *aliunde* the certificates issued by the government of the colony of Hong Kong, and vised by the consular representative of the United States at the colony of Hong Kong, China.

Your petitioner further represents that your petitioner and his family, the said Li Tom Shi and the said Li A Tsoi, his wife and daughter aforesaid, for about one year before leaving China for the United States as aforesaid, were all living in and residents of the city of Hong Kong, in the colony of Hong Kong, and before leaving said colony of Hong Kong for the purpose of coming to the United States as aforesaid, on said ship *Monmouthshire*, your petitioner's said wife and daughter applied to and obtained the permission of the government of the colony of Hong Kong, and was identified by the said government at Hong Kong as the wife and daughter of your petitioner, and as being each entitled to come to the United States and reside therein as the wife and daughter of your petitioner; and said Li Tom Shi and said Li A Tsoi were each then subjects of the Chinese Empire and residents of the colony of Hong Kong, and the said government of the colony of Hong Kong did then and there, to wit, on or about the 3d day of March, 1900, on evidence then submitted, determine and decide that said Li Tom Shi and said Li A Tsoi were the wife and daughter of your petitioner aforesaid, respectively, and as such were each entitled to enter and remain in the United States as the family and wife and daughter of your petitioner, and said government of the colony of Hong Kong did on said day, March 3, 1900, issue to each of said persons, namely, Li Tom Shi and Li A Tsoi, the wife and daughter of your petitioner aforesaid, a cer-

tificate, each of which certificates was in the English language, and each of which showed such permission to your petitioner's said wife and daughter to come to and reside within the United States, and each of such certificates contained the name of said wife and daughter aforesaid, respectively, in their own proper signatures, and each of which certificates stated the individual, family, and tribal name, also the age, height, and all physical peculiarities, occupation, and so forth, each of said certificates being in due legal form and in all respects in full compliance with Article III of the Treaty of 1894 hereinbefore referred to, and in all respects in full compliance with Section 6 of the Act of Congress of July 5, 1884, and acts supplemental to and amendatory thereof, although compliance with such acts of Congress your petitioner respectfully claims was not necessary, and that each of said certificates were duly vised by the Consular representative of the United States in said colony of Hong Kong, in all respects as provided by said treaty, and also in all respects as provided by said Section 6 of the Act of Congress of July 5, 1884, and laws supplemental and amendatory thereof, although compliance with the latter, your petitioner respectfully represents, was not necessary, in view of the provisions of the treaty aforesaid and of compliance therewith.

That said Li Tom Shi and said Li A Tsoi, wife and daughter aforesaid of your petitioner, are not either of them, nor were they either of them ever, at any time, laborers, but the family of and the wife and daughter, respectively, of your petitioner, a Chinese merchant.

And your petitioner further respectfully represents that on their arrival at the port of Portland, Oregon, as aforesaid, the said Li Tom Shi and the said Li A Tsoi, wife and daughter of your petitioner aforesaid, presented said certificates, respectively, to said I. L. Patter-

son, Collector of Customs aforesaid, and made claim that under and by virtue of such certificates they were entitled to enter and remain in the United States as the wife and daughter and family of your petitioner.

Your petitioner avers that in virtue of such certificates, respectively, the said Li Tom Shi and the said Li A Tsoi, wife and daughter aforesaid of your petitioner, were each entitled in virtue of said Article III of the treaty aforesaid to enter the United States and reside therein as the family of your petitioner.

Your petitioner further claims, that notwithstanding all these facts, such certificates were each ignored by said I. L. Patterson, Collector of Customs, and held for naught, the said Collector of Customs refusing to recognize or consider the same, and the said wife and daughter of your petitioner aforesaid were each wrongfully and unlawfully, and in violation of the rights of your petitioner's said wife and daughter aforesaid, under the provisions of the treaty hereinbefore cited, refused entry into the United States by said I. L. Patterson, Collector of Customs aforesaid.

Your petitioner further represents that immediately on the rendition of said alleged and pretended decision by the said Collector of Customs, each of said persons, the said wife and daughter of your petitioner aforesaid, took an appeal from said alleged and pretended decision of said Collector of Customs to the Secretary of the Treasury of the United States; and your petitioner avers that the Secretary of the Treasury has never yet either examined into said appeals nor made any decision therein one way or the other, nor has said appeals or either of them ever been considered, examined or decided, either by O. L. Spaulding, Assistant Secretary of the Treasury, or by any other person, except as hereinafter stated.

That on April 18, 1900, one W. S. Chance, then Chief of the Special Agents of the Treasury Department at Washington, D. C., pretended to examine said appeals, and rendered a pretended decision therein, which pretended decision purports to affirm the alleged decision of the Collector of Customs aforesaid refusing to allow said Li Tom Shi and said Li A Tsoi, wife and daughter of your petitioner, to enter the United States.

Your petitioner avers that it is claimed, as your petitioner is advised and believes, by the Collector of Customs aforesaid, that said alleged decision by said W. S. Chance, as hereinbefore stated, is the decision of O. L. Spaulding, Assistant Secretary of the Treasury. But your petitioner denies that said O. L. Spaulding, either as Assistant Secretary of the Treasury or otherwise, has ever made any examination of said appeals, or has ever made any decision therein one way or the other.

And your petitioner further avers that the said O. L. Spaulding, as Assistant Secretary of the Treasury, has no authority or jurisdiction whatever to examine into or decide said appeals or either of them, that said O. L. Spaulding, as Assistant Secretary of the Treasury, has never been legally or lawfully designated by the Secretary of the Treasury to examine into and decide such appeals, and your petitioner avers, furthermore, that the Secretary of the Treasury has no jurisdiction or power whatever to designate or authorize Assistant Secretary of the Treasury O. L. Spaulding, or any other Assistant Secretary of the Treasury, to examine into or decide said appeals.

And your petitioner further avers that the said I. L. Patterson, Collector of Customs aforesaid at the port of Portland, notwithstanding the invalidity of the said alleged decision by said W. S. Chance, and notwithstanding the further fact that said appeals have never

yet been examined or decided either by the Secretary of the Treasury, or any Assistant Secretary of the Treasury authorized to decide the same, recognizes said decision as binding on him, and as being an affirmance of his alleged decision refusing to allow said Li Tom Shi and said Li A Tsoi, the wife and daughter of your petitioner, to enter and reside in the United States, and the said I. L. Patterson, Collector of Customs aforesaid, now wrongfully detains and holds said Li Tom Shi and said Li A Tsoi, the wife and daughter of your petitioner aforesaid, in his custody, and now threatens to, and is about to place said Li Tom Shi and said Li A Tsoi, the wife and daughter of your petitioner aforesaid, on board the steamship *Braemer*, now in the port of Portland, Oregon, and about to depart for China, and threatens to, and intends to, and will, unless restrained by this Honorable Court, place said wife and daughter of your petitioner on board said steamship and will send them back to China.

That said I. L. Patterson, Collector of Customs aforesaid, claims to hold the said wife and daughter of your petitioner as aforesaid, under and by color of the authority of the United States, and your petitioner's said wife and daughter is retained in the custody of the said Collector of Customs aforesaid, and is about to be deported by him from this country back to China, in violation of the treaties now existing between the United States of America and the Chinese Empire, and in violation of the acts of Congress now in force.

Your petitioner therefore claims that said Li Tom Shi and said Li A. Tsoi, the said wife and daughter of your petitioner, are wrongfully and illegally imprisoned, detained, confined, and restrained of their liberty by said I. L. Patterson, at the city of Portland, county of Multnomah, State and District of Oregon, the only cause or

pretense for such wrongful and illegal imprisonment, restraint, and detention being the alleged decision of the Assistant Secretary of the Treasury as aforesaid.

Finally, your petitioner respectfully avers and claims that the said Li Tom Shi and the said Li A. Tsoi, wife and daughter of your petitioner aforesaid, are, by virtue of Article III of the existing treaty between the United States of America and the Chinese Empire, hereinbefore cited, and by virtue of their certificates produced by them respectively, to said Collector of Customs, as hereinbefore cited, entitled to enter and remain in the United States as the family and wife and daughter of your petitioner, a Chinese merchant. And your petitioner avers that their detention by the said I. L. Patterson, Collector of Customs aforesaid, is without jurisdiction and without due process of law, and in direct violation of their rights under the treaty hereinbefore cited and the Constitution and laws of the United States.

And your petitioner further avers that said I. L. Patterson, Collector of Customs aforesaid, was wholly without jurisdiction to take the testimony of witnesses, which he, the said Collector of Customs, did do, for the purpose of contradicting or controverting the facts stated in said certificates, respectively, as hereinbefore stated and referred to; and said I. L. Patterson, Collector of Customs aforesaid, was without jurisdiction or power to decide on the testimony of such witnesses as to the right of said Li Tom Shi and said Li A. Tsoi, wife and daughter aforesaid of your petitioner, to enter and remain in the United States.

Your petitioner therefore respectfully represents to the Court:

First. That Li Tom Shi and Li A Tsoi, the said wife and daughter of your petitioner, are entitled to enter and remain in the United States as the wife and daughter of

your petitioner, a Chinese merchant; that they and each of them fully complied with all the provisions and requirements of the existing treaty aforesaid and of the laws of the United States, to entitle them to come and remain in the United States.

Second. That said Collector of Customs, I. L. Patterson, had no jurisdiction whatever to make the examination and decision he claims to have made, and that no such examination or decision of the appeals in said cases as the law contemplates were ever made by the Secretary of the Treasury, or by any Assistant Secretary of the Treasury who had any jurisdiction or power to examine and decide such appeals.

Third. That the said wife and daughter of your petitioner are entitled to have their said appeals decided by the Secretary of the Treasury as the law provides, and until such appeals are so considered and decided, the said I. L. Patterson, as such Collector of Customs, has no jurisdiction, right or power whatever to deport the said wife and daughter of your petitioner, as he now threatens to do, and will do unless restrained by this Honorable Court; and should they be deported as the said Collector of Customs now threatens to do, and intends to do, on said steamship *Braemer*, they will be taken out of the jurisdiction of this Court and deprived of their constitutional and legal right to have their cases determined by the officials of this country as the law provides.

Wherefore, your petitioner prays that a writ of habeas corpus may issue in due form of law out of this Honorable Court, directed to the said I. L. Patterson, Collector of Customs aforesaid, commanding him to produce in this Court at such time and place as may be designated in such writ, the bodies of said Li Tom

Shi and Li A Tsoi, the wife and daughter of your petitioner aforesaid, for the purpose of such disposition as may be in accordance with the facts and the law of the case, and your petitioner will ever pray.

(Signed) LEE LUNG.

UNITED STATES OF AMERICA.

DISTRICT OF OREGON, } ss:
County of Multnomah, }

I, Lee Lung, being first duly sworn, say: That I am the petitioner in the above-entitled proceeding, and that the foregoing petition is true, as I verily believe.

LEE LUNG.

Subscribed and sworn to before me this 27th day of April, 1900.

[SEAL.[H. C. ROBERTSON,
Notary Public for Oregon.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of Habeas Corpus as to LI TOM SHI and LI A TSOI, his wife and child. } Return.

Return of Respondent to Writ of Habeas Corpus.

To the Honorable District Court of the United States, for the District of Oregon:

Now, at this time, comes I. L. Patterson, Collector of Customs for the District of the Willamette, and, in obedience to the order of your Honorable Court, now pro-

duces the bodies of Li Tom Shi and Li A Tsoi in Court, and answering the petition for a writ of habeas corpus filed herein—

Denies that Li Tom Shi is the wife of Lee Lung, and that Li A. Tsoi is the daughter of Lee Lung.

Admits that petitioner brought with him from China on the ship *Monmouthshire*, arriving in Portland upon he 3d day of April, 1900, the said Li Tom Shi and the said Li A Tsoi, representing them to be his wife and daughter, respectively.

Denies that your respondent, Collector of Customs, as aforesaid, upon the 7th day of April, 1900, or at any other time, without having power of examination, except as to certificates issued by the government of the colony of Hong Kong and vised by the consular representative of the United States at said colony, or that he made a pretended or partial examination, or did not make said examination, as the law contemplates should be made in such cases, of the right of said parties to enter into and remain in the United States as the wife and daughter of petitioner, or otherwise, or at all, or that on the said 7th day of April, 1900, or at any other time, made what purported to be, but in fact was not, a decision as to the admission of said parties.

Denies that respondent had no jurisdiction to decide on testimony *aliunde* the said certificates claimed to have been issued, as aforesaid.

Admits that said Li Tom Shi and the said Li A Tsoi were residents of the city of Hong Kong, in the colony of Hong Kong, and for the purpose of coming to the United States, applied to and obtained what purported to be a permission of the government of the colony of Hong Kong to come to the United States, but denies that said permission is regular in form, or that the said parties therein mentioned was identified as the wife and daughter of the said Lee Lung.

Denies that the said Li Tom Shi and Li A Tsoi, alleged wife and daughter of petitioner's, are not laborers; denies that they are the wife and daughter, respectively, of petitioner.

Admits that on the arrival of the said parties in the city of Portland they presented said alleged certificates to your respondent as Collector of Customs, and made claim that under and by virtue of said certificates they were entitled to enter and remain in the United States as the wife and daughter of Lee Lung; denies that by virtue of said certificates, or either of them, the said Li Tom Shi and Li A Tsoi, alleged wife and daughter of petitioner, were entitled in virtue of Article III of the treaty between the United States of America and the Empire of China, referred to in petition, to enter into the United States, or reside therein as the family of Lee Lung.

Denies that said certificates, or either of them, were ignored by respondent, but admits that they were held to be insufficient to permit the said parties to land within the United States, but denies that said alleged wife and daughter, or either of them, were wrongfully or unlawfully, or in violation of the rights of the said Lee Lung's alleged wife and daughter, under the provisions of the treaty referred to, refused entry into the United States by respondent, or were otherwise refused except as hereinafter stated.

Admits that the said Li Tom Shi and the said Li A. Tsoi, upon the rendition of the decision by your respondent denying them the right to land in the United States; that the said Li Tom Shi and the said Li A. Tsoi took an appeal from said decision to the Secretary of the Treasury of the United States, but denies that the said Secretary of the Treasury has never yet examined into said appeal or made any decision thereon, or that

said appeal has not been considered, examined or decided by either O. L. Spaulding, Assistant Secretary of the Treasury, or any other person in authority.

Denies that W. S. Chance, Chief of the Special Agents of the Treasury Department at Washington, pretended to examine said appeal or rendered a pretended or any decision therein, or any pretended decision which purported to affirm the alleged decision of the Collector of Customs, refusing to allow the said parties to enter the United States.

Denies that O. L. Spaulding, as Assistant Secretary of the Treasury, has no authority or jurisdiction to examine into or decide such appeals, or that the said O. L. Spaulding, as Assistant Secretary, of the Treasury, has never been legally or lawfully designated by the Secretary of the Treasury to examine into and decide such appeal; and denies that the Secretary of the Treasury has no jurisdiction or power whatever to designate or authorize the Assistant Secretary of the Treasury, O. L. Spaulding, or any other Assistant Secretary of the Treasury, to examine into or decide said appeals.

Admits that under a decision of the Secretary of the Treasury, affirming the decision of respondent refusing said parties to land within the United States, your respondent now obtains and holds the said Li Tom Shi and the said Li A. Tsoi in his custody for deportation to the country from whence they came, but denies that said detention is unlawful.

Denies that the said Li Tom Shi and the said Li A Tsoi, or either of them, are wrongfully or illegally imprisoned, detained, confined, or restrained of their liberty by your respondent at the city of Portland, county of Multnomah, State of Oregon, or elsewhere or at all.

Denies that the said Li Tom Shi or the said Li A Tsoi, or either of them, are by virtue of Article III, or

any other portion of the existing treaty between the United States of America and the Chinese Empire, or by virtue of their alleged certificates produced by them to your respondent, entitled to enter in or remain in the United States as a family, or wife, or daughter of said Lee Lung, or otherwise, or at all.

Denies that your respondent, Collector of Customs as aforesaid, was wholly or at all without jurisdiction to take testimony of witnesses, which he did do for the purpose of contradicting and controverting the facts pretended to be stated in said pretended certificates, was without jurisdiction or power to decide the testimony of said witnesses as to the right of the said Li Tom Shi and the said Li A Tsoi, alleged wife and daughter of the said Lee Lung, to enter or remain in the United States.

Denies that Li Tom Shi and Li A Tsoi, or either of them, are entitled to enter or remain in the United States as the wife or daughter of the said Lee Lung, or otherwise, or at all, or that they, or either of them, have fully or at all complied with all or any of the provisions or regulations of the existing treaty and laws of the United States to entitle them to come or remain within the United States, and denies that your respondent had no jurisdiction to make or examine a decision, or that no examination or decision of the appeals in said cases, as the law contemplates, were made by the Secretary of the Treasury or any Assistant there of who had jurisdiction or power to examine or decide such appeals.

Your respondent, for a further and separate return and reasons why he detained the said Li Tom Shi and Li A Tsoi in his custody, alleges:

That on the 7th day of April, 1900, at the port of Portland, in the State and District of Oregon, the said

Li Tom Shi and Li A Tsoi made application to land in the United States, at said port of Portland, from the ship *Monmouthshire*, as of the excepted class of Chinese persons.

That the said Li Tom Shi and the said Li A Tsoi, each presented what they claimed to be a certificate issued by the government of the Province of Hong Kong and vised by the United States Consul General at Hong Kong, the originals of which are hereunto attached and made a part of this return; that the said certificates were not in conformity with the laws of the United States, not being signed by the Registrar General of Hong Kong, person in authority there, and who is required to sign such certificates, but was signed by one F. A. May, whom your respondent is informed, and therefore alleges, was the then Captain General of Police of Hong Kong, and that a Mr. Lockhart is the Registrar General at Hong Kong; that Mr. Lockhart's name does not appear upon said alleged certificates; that said certificates were duly considered by your respondent, and your respondent took other testimony to determine whether or not the said Li Tom Shi and Li A Tsoi were of the excepted class of Chinese persons entitled to land as such under the laws and treaties of the United States; that after considering all of the testimony, together with said certificates, your respondent, as Collector of Customs, rendered his decision in the case of Mrs. Li Tom Shi, and in substance as follows, to wit:

"No. 1. Office of the Collector of Customs, District of Willamette, Portland, Oregon, April 7, 1900.

Now, at this time, comes on for hearing the application of Mrs. Li Tom Shi, a subject of the Emperor of China, for admission to the United States as a wife of Lee Lung, and after hearing the evidence of applicant, and witnesses on behalf of the applicant, and the evidence of Lee Lung and Miss Li A Tsoi and irregularity of

consular certificate, and no evidence of marriage, and being at this time fully advised in the premises, it is ordered that the said Mrs. Li Tom Shi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove his right to land.

I. L. PATTERSON, [SEAL.]
Collector of Customs."

Did, upon same date, render a like decision, with the exception of there being no reference to marriage, in the case of Li A Tsoi; that thereafter, upon the 10th day of April, 1900, said Li Tom Shi and the said Li A Tsoi duly perfected an appeal from the said decision of the Collector of Customs, denying them the right to land in the United States, to the Secretary of the Treasury of the United States, the said Secretary of the Treasury, by O. L. Spaulding, Assistant Secretary of the Treasury, on the 18th day of April, 1900, rendered an opinion duly affirming said decision of your respondent, refusing said parties to land within the United States, the original of which is hereunto appended, and made a part of this return; that respondent does not detain or hold either the said Li Tom Shi or Li A Tsoi for any other reason or cause save and except as herein set forth.

Wherefore, respondent prays your Honorable Court for an order remanding the said Li Tom Shi and the said Li A Tsoi to his custody for deportation from the United States to the country from whence they came.

I. L. PATTERSON.

DISTRICT OF OREGON } *ss:*

I, I. L. Patterson, being first duly sworn, depose and say, that I am the Collector of Customs for the District of the Willamette; that I have read the foregoing return, and know the contents thereof, and that the same is true, as I verily believe; so help me God.

I. L. PATTERSON.

Subscribed and sworn to before me this 7th day of May, 1900.

E. D. McKEE,
Clerk United States District Court,
District of Oregon.
By G. H. MARSH,
Deputy.

The exhibits attached to the foregoing return will be found copied at pages 24 to 31, inclusive, of the Transcript on Appeal.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the District of Oregon.

In the Matter of the Application of LEE LUNG for Writ of Habeas Corpus as to LI TOM SHI and LI A TSOI, his wife and child. } Reply to Return.

Reply to Return of Respondent.

To the Honorable, the District Court of the United States for the District of Oregon:

Now, at this time, comes Lee Lung, the petitioner in the above entitled proceeding, and makes reply and traverse to the return of I. L. Patterson, Collector of Customs, filed herein, as follows:

Your petitioner denies that the certificates produced by said Li Tom Shi and Li A Tsoi to the Collector of Customs were not in conformity with the law of the United States.

Your petitioner denies that under the law of the United States it was necessary that such certificates should be signed by the Registrar General of Hong Kong, or

that he is required to sign such certificates; although your petitioner avers that said certificates and each of them were signed by one F. A. May at the instance and under the direction of the Registrar General of Hong Kong, and as and for him.

And your petitioner avers that F. A. May, whose signature is attached to each of said certificates, and placed there, together with the official seal of the Registrar General, with the consent and at the instance and under the directions of the Registrar General of Hong Kong, is an official himself, high in authority in the British colony of Hong Kong, and with full jurisdiction and power to represent the government of the British colony of Hong Kong, and also the Registrar General in the matter of the execution of such certificates, and each of said certificates contains the official seal of the Registrar General of the British colony of Hong Kong, by authority of such government; and the said certificates, your petitioner avers, are each of them the certificates of the government of the British colony of Hong Kong, and are in all respects all that is required by the law of the United States and the treaties of the United States now existing between the United States Government and the Imperial Government of China.

Your petitioner, further replying, as in his petition, avers that said I. L. Patterson, Collector of Customs, erred in holding said certificates and each of them irregular, and in admitting testimony to contradict such certificates, and in all this the Collector of Customs exceeded his jurisdiction, erred in law, and his decision is therefore reviewable in this Court.

Your petitioner denies that the Secretary of the Treasury, by O. L. Spaulding, Assistant Secretary of the Treasury, did on the 18th day of April, 1900, or at any other

time, render an opinion duly affirming said alleged decision of the Collector of Customs.

Your petitioner avers that what is averred to be the original of such opinion and decision attached to the return herein, shows upon its face that it is not the decision of the Secretary of the Treasury, or of the Assistant Secretary of the Treasury, O. L. Spaulding, but that the same is the decision of W. S. Chance, Chief of the Special Agents of the Treasury Department.

Your petitioner further avers that the pretended hearing before the Collector of Customs on the 7th day of April, 1900, as aforesaid, was had before your petitioner had secured any counsel, and he had no counsel present to advise him as to his rights before the Collector of Customs, and that such examination was without jurisdiction, perfunctory, and was not a thorough examination of the case.

Wherefore, your petitioner prays as in his original petition.

LEE LUNG,
Petitioner.

UNITED STATES OF AMERICA,
District of Oregon, } ss:

I, Lee Lung, being first duly sworn, say that I am the petitioner named in the foregoing reply, and that said reply is true, as I verily believe.

LEE LUNG.

Subscribed and sworn to before me this 7th day of May, 1900.

H. C. ROBERTSON,
[SEAL.] *Notary Public for Oregon.*

Testimony in the Case.

(The attention of the Court is attracted to all the testimony in the case. See pages 53 to 76, inclusive, of Transcript on Appeal.)

It will be seen from what precedes, that Lee Lung, the petitioner, is a Chinese merchant, doing business in connection with several large firms in the United States, the principal house being at Portland, Oregon. That in October, 1898, he returned to China; that on the 3d day of April, 1900, he returned to this country in the steamship *Monmouthshire*, bringing with him Li Tom Shi, whom he claimed to be his wife, and Li A Tsoi, whom he claims is his daughter, the latter being only ten years of age. Lee Lung was, without hesitation, permitted to land as a Chinese merchant; the right to land, however, upon the part of the alleged wife and daughter was denied, and on appeal to the Secretary of the Treasury, this decision, if ever passed upon at all, which we deny, was affirmed. Subsequently, this petition for writ of habeas corpus was filed in the District Court of the United States for the District of Oregon. The writ was ordered to be issued, and, on final hearing, was discharged by the Court, the Court rendering the following opinion:

IN THE DISTRICT COURT OF THE UNITED STATES,

For the District of Oregon.

In the matter of the Application of LEE LUNG for Writ of Habeas Corpus for LI TOM SHI and LI A TSOI, his wife and child.

Opinion of the Court.

John H. Hall for the Government.

John H. Mitchell and Charles J. Schnabel for the petitioner.

BELLINGER, J.—This is a proceeding on a writ of habeas corpus, issued upon the petition of Lee Lung in behalf of Li Tom Shi and Li A Tsoi, his wife and child, who recently arrived at this port on the steamer *Monmouthshire*, and were refused landing by the Collector of Customs. Lee Lung is a merchant doing business in this city and having business connections with various Chinese mercantile establishments throughout the country. He is the agent of the North Pacific Steamship Company in soliciting Chinese passengers to and from China by that line. He was a passenger by the same steamship upon which his wife and daughter arrived. Before going to China he consulted with an attorney in this city, and also saw the Collector of Customs at this port, with reference to the evidence necessary to secure the landing of his wife and child, and was informed that a certificate issued out of the Registrar General's office at the port of Hong Kong, that being the port of his intended departure, vised by the American Consul, would accomplish such object. In accordance with this advice Lee Lung procured certificates issued out of the office of the Registrar General at Hong Kong, and under the seal of that office, vised by the American Consul-General at that port, as required by law, which certificates, in all respects, conform to the requirements of the Act of Congress, and which are made by such act *prima facie* evidence of the right of the persons named therein to land in the United States.

It is alleged in the petition for the writ that the Collector of Customs at this port disregarded the evidence thus provided, and, without authority of law, refused to

permit Li Tom Shi and Li A Tsoi to land; that he made no decision such as the law contemplates shall be made, and that his acts as aforesaid, in ignoring the certificates issued out of the Registrar's office at the port of Hong Kong, were wrongful and unlawful, and in violation of the rights of the petitioner's wife and daughter aforesaid, under the provisions of the treaty of the United States with the Chinese government, and that the appeal taken by the petitioner to the Secretary of the Treasury was not heard or passed upon by that officer, but that there was a pretended decision in respect thereto by one W. S. Chance, a special agent of the Treasury Department.

The Collector of Customs in his return to the writ alleges that the certificates in question were not in conformity with the laws of the United States, by reason of the fact that they were not signed by the Registrar General at Hong Kong, the person in authority there, but were signed by one F. A. May, who is alleged to be the Captain General of Police at that port. He further alleges that said certificates were duly considered by him, and that he took other testimony as to the right of the persons named in the petition to land, and decided adversely thereto, and that petitioner's appeal from said decision was heard and adversely decided by O. L. Spaulding, Assistant Secretary of the Treasury.

In the case of Way Tai (96 Federal, 484), it was held in this Court, by Judge Gilbert, on the authority of decisions by the Supreme Court of the United States, that the Collector is not required to conform his proceedings to what is known as due process of law; that the Collector of Customs is not required to take any testimony at all, but to decide as to the right to land upon his own inspection and examination, and that his decision in respect thereto is final; and such is the effect of the decisions of the Supreme Court cited in that case. By

these decisions it is held that "the statute does not require Inspectors to take any testimony at all, and allows them to decide on their own inspection and examination the question of the right of any alien immigrant to land." (Nishimura Ekiu's Case, 142 U. S., 651.)

In the earlier case of Gin Fung, decided by the same judge (89 Federal, 153), the petitioner was discharged upon writ of habeas corpus, where it appeared that the Collector of Customs only heard part of the testimony of one witness, and then left the room, delegating further examination of the witness to one B. F. Jossey, Chinese Inspector; that the petitioner presented another witness on the following day, at the office of the Collector, where he was met by said Inspector, who offered to hear the testimony of the witness presently, but intimated to such witness that he might be arrested for false swearing, if he testified as a witness in the proceeding, with the result that the witness was intimidated thereby, and refused to testify; that, as a matter of fact, the steamer had cleared from the port of Portland on the previous evening, on her way to China, taking the petitioner with her. Upon appeal to the Circuit Court of Appeals, this case was reversed, and it is held, in effect, that the Court is without jurisdiction to discharge, upon writ of habeas corpus, where the Collector undertakes to deport a petitioner without a hearing, or pending a hearing; that the power of the Court might be properly exerted in such case to arrest the consequences of the Collector's illegal act, but that it could go no further. (100 Fed., 389.)

It is not clear as to what is meant by jurisdiction in the courts to "arrest the consequences of the Collector's illegal act." If the Court is without jurisdiction to inquire, upon writ of habeas corpus, as to the legality of the petitioner's detention under such circumstances, it is without any jurisdiction whatever in the premises. So

far as I am advised there is no power in the courts to control the action of the Collector of Customs as suggested. These cases establish the doctrine that the Collector of Customs, in determining the right of Chinese persons to land, may act upon his own information and discretion, and that such action, however taken, is conclusive of the matter, subject to the right of appeal to the Secretary of the Treasury; that his decision, if he decides not to hear testimony, or not to give effect to evidence which the laws of Congress have provided shall be sufficient to establish the right to land in the first instance, or decides not to decide, is conclusive. Under the doctrine of these cases, it is immaterial, so far as the jurisdiction of this Court is concerned, whether the petitioner's appeal to the Secretary of the Treasury is heard by the Secretary in person, or by a subordinate official in his Department, or is heard at all.

The petition for the writ is dismissed.

C. B. BELLINGER,
Judge.

The facts of the case are truly stated in this opinion of the Court.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the District of Oregon.

In the Matter of the Application of Lee Lung for Writ of Habeas Corpus as to Li Tom Shi and Li A Tsoi, his wife and child. } Assignment of Errors.

Assignment of Errors.

Lee Lung, in the above entitled cause, in connection with his petition for an appeal, makes and assigns the

following errors, which he avers occurred upon the hearing and determination of this cause and his application for a writ of habeas corpus herein, for and in behalf and for the bodies of Li Tom Shi and Li A Tsoi, his wife and daughter, respectively, and upon which he will rely upon appeal to the Supreme Court of the United States.

I.

Error of the Court in holding that, upon the facts set forth in the petition herein, that the act of Congress approved August 18, 1894, has withdrawn from the jurisdiction of the Court authority to act in the premises or to issue the writ.

2.

Error of the Court in dismissing petitioner's application herein.

CHAS. J. SCHNABEL and
JOHN H. MITCHELL,
Attorneys for Lee Lung and Petitioners.

ARGUMENT.

We concede the general rule, well established by repeated decisions of this and other courts, that under the existing law the decision of the Collector of Customs refusing to land an alien is not reviewable by the courts on writs of habeas corpus or otherwise. This, we say, we concede to be the *general* and well-established rule, but this rule, like almost every other rule, has its exceptions, or rather its limitations and qualifications.

For instance, if for any reason the Collector in his decision exceeds his jurisdiction, or exercises a jurisdiction not vested in him by the treaty or law, then, it is submitted,

his decision would be reviewable in the courts on habeas corpus. To make plain the proposition we wish to present, we submit if a treaty or a law of Congress declares that a certain paper, executed in a certain way, by a certain official, *shall be evidence*, and the *only* evidence which an alien is permitted to present of his right to land and remain in this country, and that such paper shall make a *prima facie* case of his right to land, then, we submit, if the Collector rejects such a paper, and refuses to consider it, that he exceeds his jurisdiction, and his decision in such a case is *void*, and is reviewable by the judiciary.

Assuming for the present that the sixth section of the Act of 1884 is still in force and applicable to the case at bar, we will inquire as to its scope and effect. That section provides as follows:

"* * * Such certificate, vised as aforesaid, *shall be prima facie evidence of the facts set forth therein*, and shall be produced to the Collector of Customs of the port in the district of the United States at which the person named therein shall arrive, and afterwards produced to the proper authorities of the United States whenever lawfully demanded, *and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States*, but such certificate may be controverted and the facts therein stated disproved by the United States authorities."

This provision, the Court will observe, provides not only that such certificate "*shall be prima facie evidence of the facts set forth therein*," but also that it shall be "*the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States.*"

It is respectfully submitted, therefore, that if the Collector rejects a certificate that is in all respects such a certificate as the law prescribes, that in doing so he ex-

ceeds his jurisdiction. The Collector has no right, no power, no jurisdiction to decide that a certain paper which the Congress has said *shall be evidence*, and *prima facie* evidence of a certain right is *not* evidence. The question presented is quite different from the one wherein the Collector passes upon certain evidence, either rejecting or admitting it, when there is no law on the subject to the effect that the evidence thus rejected or admitted *shall be evidence of a certain fact.* Congress has seen proper to define in this section the kind and character of a *certain paper;* which *shall be evidence*, and which shall make a *prima facie* case of the right of the alien to land.

The rejection of these certificates by the Collector was not merely an error in law, it was more than this. By rejecting them he *exceeded his jurisdiction.* If in fact the certificates were such as the law contemplates, and the Collector held that they were not, then, it is submitted, he exceeded his jurisdiction, from the fact that the statute itself declares such certificates to be *prima facie* evidence of the parties' right to land, and shall be the *only* evidence which such person can produce. It is respectfully insisted, therefore, that there was no such hearing or decision by the Collector of Customs as the law contemplates shall be final. There has not been mere error of law upon his part, but a plain *excess of jurisdiction*, and therefore his decision is reviewable by the Court.

It is, we respectfully submit, an open question in this case as to whether the Collector considered these certificates and passed upon their validity and rejected them as insufficient, or whether he did not consider them at all and did not pass upon their validity or invalidity, as in either view of the case, we respectfully submit, the Collector is not chargeable merely with error, in which

event his decision is not reviewable by the Court, but with the more serious charge of having *exceeded his jurisdiction*, in which case, we submit, his decision is reviewable.

The Collector's decision in the case of the alleged wife is as follows:

"Refused. No. 1.

Office of the Collector of Customs,
District of Willamette,
Portland, Oregon, April 7, 1900.

"Now, at this time, comes on for hearing the application of Mrs. Li Tom Shi, a subject of the Emperor of China, for admission to the United States as a wife of Lee Lung, and after hearing the evidence of applicant and , witnesses on behalf of the applicant, and the evidence of Lee Lung and Miss Li A Tsoi *and irregularity of consular certificates*, and no evidence of marriage, and being at this time fully advised in the premises, it is ordered that the said Mrs. Li Tom Shi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove his right to land.

[SEAL.] I. L. PATTERSON,
(Record, p. 14.) *Collector of Customs.*"

While in the case of the daughter the decision of the Collector is as follows:

"Refused. No. 2.

Office of the Collector of Customs,
District of Willamette,
Portland, Oregon, April 7, 1900.

"Now, at this time, comes on for hearing the application of Miss Li A Tsoi, a subject of the Emperor of China, for admission to the United States as a daughter of Lee Lung, and after hearing the evidence of applicant and , witnesses on behalf of the applicant, and the evidence of Mrs. Li Tom Shi and Lee Lung *and irregularity of papers*, and being fully advised in the premises,

it is ordered that the said Miss Li A Tsoi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove his right to land.

[SEAL.] I. L. PATTERSON,
(Record, p. 13.) *Collector of Customs.*"

This is one view of the case, and proceeds upon the assumption that the Collector decided that the certificates were *not* such certificates as the treaty and the law required, and therefore his decision was in excess of his jurisdiction.

But there is another view of the case, based upon the assumption that it appears from the record that the decision of the Collector was not such a one as the law contemplates, and therefore is not final or binding upon the courts, and that is this: While it appears from what purports to be the decision of the Collector attached to his return, that Mrs. Li Tom Shi and Li A Tsoi presented certificates, it also appears from such decision that the Collector did not pass upon the validity of the certificates one way or the other. It does not appear from his decision what effect, if any, one way or the other, was given to the certificates by the Collector; the decision simply says: "*Irregularity of the consular certificates.*" This is no decision at all, one way or the other; it does not appear from this whether the Collector held the certificates to be valid or invalid; whether they complied with the law fully, according to the letter, or whether they did not; whether they were a substantial compliance with the law or otherwise.

If the Collector claim, as it seems he did, that there was *some* irregularity about the certificates, then it was his duty to decide whether such irregularity did or did not affect the validity of the certificates, and in failing to do this, and leaving the question wholly in

the dark by his decision as to whether the certificates were valid or invalid—the provisions of the law and treaty being considered—he acted without jurisdiction and has not made *such a decision* as should be final or conclusive on this Court or any other.

The Collector, it will be observed, after reciting that there is "*irregularity of consular certificates*," says "*and no evidence of marriage.*" The *law*, however, declares that the certificate presented by Li Tom Shi "shall be *prima facie* evidence of the *facts* set forth therein." And one of the facts set forth in said certificate is that Li Tom Shi is the "wife of Lee Lung, merchant of Portland, Oregon, U. S. A." We have, then, this state of facts presented: The statute of the United States declaring that a certain paper, executed in a certain way, shall be evidence of a certain fact therein recited, while the Collector of Customs declares that there is no evidence whatever before him to the effect that the claimant Li Tom Shi is the wife of Lee Lung. This, we submit, is an excess of jurisdiction upon the part of the Collector. It is a decision he has no right to make, and, therefore, it is a decision which is *void*. It is true the Collector could hear other evidence for the purpose of *assailing* the fact recited in the certificate, but he must, in the *first instance*, it is submitted, give the claimant the benefit of the *prima facie* case made by the certificate, because such is the mandate of the law.

The Certificates are in all Respects Legal.

It is respectfully submitted the certificates presented by Li Tom Shi the wife, and Li A. Tsoi the child, were in all respects legal, and should have been so recognized by the Collector. (See Exhibit "A," Record, 13, and Exhibit "B," Record, 15.)

These certificates, respectively, were issued in pursuance of the terms of the treaty; they comply in all respects in the recitals, not only with the requirements of the treaty, but with the Act of Congress, were signed by F. H. May, by Registrar General, Hong Kong, and these properly vised by R. Wildman, United States Consul General, who certifies that the seal and signature to the certificates are the genuine seal and signature of F. H. May. (Record, 14, 15, 16.)

These certificates bearing the seal of the British government at Hong Kong, should have been received as authentic by the Collector, and should have been regarded as presenting a *prima facie* case of *all the facts recited therein.* Among these it is recited that Li Tom Shi is the wife of Li Lung, merchant of Portland, Oregon, U. S. A., and that Li A. Tsoi is the daughter of Li Lung, merchant of Portland, Oregon, U. S. A. (Record, 13–15.)

The statute does not say one word about the Registrar General. The Attorney General in an opinion says that a certificate of the Registrar General will be accepted. Our contention is in this case, as the certificates have the seal of office attached, the presumption follows that they were executed by the authority of the Government.

The sixth section of the Act of May 6, 1882, as amended by section 6 of the Act of July 5, 1884, and the second article of the treaty of 1880, were abrogated and repealed by the third article of the treaty between the United States and the Imperial Government of China of March 17, 1894.

The question has never yet been decided by the Supreme Court of the United States, or any of the Federal courts, so far as we have been able to examine, as to

the precise effect of the third article of the treaty between the United States and the Empire of China of March 17, 1894, ratified December 7, 1894, in so far as the question is concerned as to what any one of the exempted classes must do to entitle him to come here and remain in the United States.

Various questions have arisen and been decided by the Supreme Court of the United States as to the rights of the exempted classes under the second article of the treaty of 1880, construed in connection with the sixth section of the Chinese Exclusion Act of 1882 as amended by the Chinese Exclusion Act of 1884.

Prior to February 26, 1900, the Federal District and Circuit Courts, as well as the Court of Appeals, had divided in their opinions and decisions as to the effect of this provision of the treaty of 1880, construed in connection with the sixth section of the Act of 1882, as amended by the sixth section of the Act of 1884 as applicable to the exempted classes. Some of these courts holding, as will be shown specifically hereinafter, that the wife and child of a Chinese merchant in order to be admitted must obtain and produce the certificate as provided by the sixth section of the Act of 1884; while others of these Federal courts were equally positive in their declarations and decisions to the effect that a wife or child of a Chinese merchant was not obliged to produce such certificate, but could be admitted on simple proof, satisfactory to the Collector of Customs, that such person was the wife or child of a Chinese merchant.

This Court, however, on February 26, 1900, in the case of Mrs. Gue Lim, Ah Tong, Yee Yuen, and Ah Quong, on appeal from the District Court of the United States for the District of Washington, held that under the treaty of 1880, and the sixth section of the Act of 1882, as amended by the sixth section of the Act of 1884, the

wife and child of a person admitted to be a Chinese merchant, and entitled to enter and live within the United States, was not obliged to obtain or produce the certificates specified in section 6 of the Act of 1882, as amended by the Act of 1884.

Gue Lin, Ah Tong, Ye Yuen, and Ah Quong. 176 U. S. 459.

But this Court in that case did not consider or pass upon the question as to the precise effect, meaning, and scope in its application to the exempted classes of the third article of the treaty of December, 1894, and we now in this case call upon this Court to pass upon that question.

Our contention is, therefore, that the *third* article of the treaty of 1894 is wholly and entirely different in its scope, meaning, and effect from the *second* article of the treaty of 1880, and also of the sixth section of the Act of 1882, as amended by the sixth section of the Act of 1884, and that it is in effect *a repeal of both of those provisions*. For the convenience of the Court we now cite these two articles in the respective treaties of 1880 and 1894.

Treaty of 1880, Article II.

"Chinese subjects whether proceeding to the United States as teachers, students, merchants or from curiosity, together with their body and household servants, and Chinese laborers who are now within the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to citizens and subjects of the most favored nations."

Treaty of 1894, Article III.

The provisions of this convention shall not affect the right at present enjoyed of Chinese subjects, being officials, teachers, students, merchants or travelers for curi-

osity or pleasure, but not laborers, of coming to the United States and residing therein. *To entitle such Chinese subjects as are above described to admission into the United States they may produce a certificate from their government, or the government where they last resided, vised by the diplomatic or consular representative of the United States in the country or port whence they depart.*"

The Court will perceive the difference in these two articles. In the former, that is the treaty of 1880, there is no provision whatever as to the *evidence* which the exempted party must produce in order to entitle him to enter the United States, but under that treaty this question as to what the exempted party must do, what evidence he must produce, and the effect of such evidence, was left entirely to the Congress of the United States; hence, the passage by Congress, first, of the sixth section of the Exclusion Act of 1882; and, second, its subsequent amendment in the Exclusion Act of 1884.

In the other case, that of the third article of the treaty of 1894, the two governments, acting together, provided, *in terms*, in this third article of the treaty of 1894, as to the steps to be taken, and *the evidence* to be produced by any member of the exempted classes, in order to admit such person to the United States, thus taking this question out of the hands of Congress entirely—unless, indeed, Congress might, by an act passed subsequent to the date of the treaty, if it saw proper, which it is conceded Congress might do or might have done—which would have operated as a repeal of the provisions of the treaty itself.

Now, mark the difference, moreover, between what is required of the exempted party under the *third* article of the treaty of 1894, in order to entitle such party to admission, and that required under the *second* article of the treaty of 1880, construed in connection with the amendment of section 6 of the Act of 1884.

In the treaty of 1880, and the Act of 1884, it was required that the certificate should state a great number of things; the sixth section of the Act of 1884, after providing that anyone entitled under the treaty of 1880 to come within the United States, should obtain the permission of, and be identified as so entitled by the Chinese government, or of such other government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such government, then provides as follows:

"Which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his own proper signature, and which certificate shall state the individual, family, and tribal name in full, title or official rank, if any; the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States. If the person so applying for a certificate shall be a merchant, such certificate shall in addition to the above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid."

All these things were required by the treaty of 1880, construed in connection with the sixth section of the Act of 1884. But mark the difference in the third article of the treaty of 1894. All that is necessary to entitle a member of the exempted class to come in under that article of that treaty is that he or she shall produce—

"a certificate from their government, or the government where they last resided, vised by the diplomatic or consular representative of the United States in the country or port whence they depart."

So it will be perceived by the Court that not only the

right of certain exempted classes to come to this country, but also the *evidence* which such exempted classes shall produce is provided for in the treaty itself.

It must be borne in mind that since the treaty of 1894 went into effect, Congress has passed no act whatever upon the subject of Chinese exclusion that in any manner conflicts with the third article of the treaty of 1894.

Furthermore, when the third article of the treaty of 1894 protects the rights of "Chinese subjects being officials, teachers, students, merchants, or travelers for curiosity, or pleasure, but not laborers," in coming to the United States and residing therein, such provision, under the law and adjudications of this Court, that a merchant's wife and child occupy the same status as a merchant, and therefore such wife and child, under the third article of the treaty of 1894, is just as much entitled to a certificate and to admission under such certificate as though the words "merchant's wife and children had been inserted *eo nomine* in the treaty itself.

As a further and, what seems to us, a conclusive argument in favor of our contention that the treaty of December, 1894, was intended by all parties to the same to repeal and set aside section 6 of the Act of 1882, as amended by section 6 of the Act of 1884, in regard to the character of the certificates to be produced by the exempted classes, is found in the fact that by Article V of this treaty the provision for the Act of Congress of May 5, 1892, as amended by the Act approved November 3d, 1893, requiring all Chinese laborers lawfully within the limits of the United States before the passage of the Act of 1892 to be registered, as in said acts provided, was expressly cited and approved by the fifth article of the treaty. This article is as follows:

Treaty of 1894, Article V.

"The Government of the United States, having by an

Act of the Congress approved May 5, 1892, as amended by an Act approved November 3, 1893, required all Chinese laborers lawfully within the limits of the United States before the passage of the first-named act, to be registered as in said acts provided, with a view of affording them better protection, the Chinese government will not object to the enforcement of such acts, and reciprocally the Government of the United States recognizes the right of the Government of China to enact and enforce similar laws or regulations for the registration, free of charge, of all laborers, skilled or unskilled (not merchants as defined by said act of Congress) citizens of the United States in China, whether residing within or without treaty ports."

If it were intended by the treaty of 1894 that *all the provisions* of the acts of Congress relating to Chinese exclusion should remain in force, why should the parties to the treaty have selected *one* provision of the Act of May 5, 1892, as amended by the Act of November 3, 1893, requiring laborers to register, and extend it and recognize it by making it a part of the treaty? The rule *expressio unius, exclusio alterius* applies in this case. If it were intended that all the acts of Congress on the subject of Chinese exclusion, that is, all the acts relating to the steps to be taken by laborers here, and the steps to be taken by the exempted classes in order to come here, were to be continued in force, then there was no necessity of selecting *one* provision of *one* act, and saying that one should be considered as not obnoxious and in force. And the fact that this was done is strong proof in favor of the conclusion that all other provisions not thus incorporated in the treaty were to be considered as abrogated by the treaty.

A further, and strong argument, as it seems to us, in favor of our contention that the treaty of 1894 was to be a full and new arrangement between the two governments, solely independent of any former legislation by

Congress, with one single exception, and which definitely defined not only those who should, and those who should not come and reside in the United States, but also as to precisely what each class should do, that is, those that were to remain in this country, and those that were permitted to come here—is found in the fact that by the latter clause of Article 3 of that treaty the regulations that should govern and control Chinese *in transitu* across the territory of the United States, was specifically left to the Government of the United States. This clause reads as follows:

"It is also agreed that Chinese laborers shall continue to enjoy the privilege of transit across the territory of the United States in the course of their journey to and from other countries, subject to such regulations by the Government of the United States as may be necessary to prevent such privilege of transit from being abused."

So, it will be observed by the Court, the treaty leaves this one matter to be regulated by Congress, or by such action of the Executive Department of our Government as may be deemed advisable, so as to prevent the privilege of transit from being abused. This, then, is the only matter of regulation that is left by the treaty to the sole action of the Government of the United States.

We, therefore, respectfully insist that if the wife and child of Lee Lung in this case have complied with the provisions of Article III of the treaty of 1894, by the presentation to the Collector of Customs of certificates from the British government of the colony of Hong Kong, properly vised by the Consular Representative of the United States at that port, then they are entitled to admission, the only question open for consideration by the Collector being as to the identity of the parties named in the certificates.

For the purpose of showing the standing of Lee Lung, sometimes called Li Lung in this record, the attention of the Court is respectfully attracted to the certifications of his standing by many promint business men in Oregon, as shown by the record, pages 40–44.

SUMMARY.

Our contention therefore is, first, assuming that section 6 of the Act of 1882, as amended by section 6 of the Act of 1884, to be still in force and applicable to the cases at bar, that then in that case the Collector exceeded his jurisdiction in the manner as heretofore indicated, his decision is void and is reviewable by the court; and, second, assuming that by the third article of the treaty of 1894 not only the second article of the treaty of 1880, but also section 6 of the Act of 1882, as amended by section 6 of the Act of 1884, were abrogated and repealed—which we believe to be the case—then in such case the *only* evidence provided for as to the right of an alien Chinese to land in this country is the certificate provided for by Article III of the treaty of 1894, and this evidence was produced by the claimants in this case.

In the case just suggested, while we claim that no right exists upon the part of the United States to contravene the facts stated in the certificate by other evidence, still, should this be conceded, then it is respectfully submitted there was no sufficient evidence offered by the Collector to impeach the facts recited in the certificate; and the Collector, moreover, had no more right to reject the certificate issued in pursuance of Article III of the treaty of 1894—if such certificate is issued in full compliance with such treaty—than he had to reject one issued under the sixth section of the Act of 1884.

Wherefore, All things considered, we respectfully submit the decision of the District Court of the United States for the District of Oregon should be reversed, that the writ of habeas corpus issued heretofore in this case should be held good, and the claimants Li Tom Shi and Li A Tsoi should be permitted to remain in this country.

CHARLES J. SCHNABEL and
JOHN H. MITCHELL,
Attorneys for Petitioner.

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No. 189.

Office Supreme Court U.S.
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APR 18 1902
JAMES H. McKENNEY,
Clerk.

Brf. of Atty. Gen. (Boyd, Asst.) for Appellee.

Filed Apr. 18, 1902.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

LEE LUNG, APPELLANT,
v.
I. L. PATTERSON, COLLECTOR OF CUSTOMS for the port of Portland, Oreg. } No. 189.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

LEE LUNG, APPELLANT,
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I. L. PATTERSON, COLLECTOR OF CUSTOMS for the port of Portland, Oreg. } No 189.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR THE UNITED STATES.

The appellant, a Chinese merchant domiciled in this country, prayed for habeas corpus on behalf of his wife and minor daughter, whose admission was denied by the collector. (Rec., pp. 1–7.) The writ was issued (p. 8) and return made (pp. 9–17), which was traversed (p. 17); testimony was taken (pp. 25–40), and after hearing, the petition was dismissed on the ground that the court was without jurisdiction. (Order of the court, p. 19; opinion, pp. 20–22.)

I.

THE EXECUTIVE DECISION IS FINAL.

The appellant's claim is that the collector had no power to examine into the matter *aliunde* the certificates presented by the wife and daughter, which, under

Article III of the treaty of 1894, were claimed to be conclusive as to the right to enter and remain; that on appeal to the Secretary of the Treasury the adverse decision was made either by the chief of the division of special agents or by an Assistant Secretary, which is not a valid decision.

It is clear from the collector's answer that the certificates were not ignored, but were held to be insufficient, among other reasons because they were not signed by the proper officer of the Government of Hongkong. Section 6 of the act of 1884, in its last paragraph, reserves to the United States the right to controvert a certificate and disprove the facts therein stated. Upon appeal, the Secretary of the Treasury, by Assistant Secretary Spaulding, sustained the rejection of the certificates and the denial of entry, especially in the case of the wife under the testimony elicited, on the ground that she was the second and plural wife, and that the laws of the United States do not recognize plural marriages as valid. In the case of the daughter, a minor child of the appellant by his first wife, the Secretary found that the evidence presented is conflicting and inconclusive. The appeals in both cases were overruled, and the decision denying admission sustained. The petitioner having averred that the original hearing before the collector was held before the petitioner had secured counsel—was perfunctory and was not a thorough examination of the case, testimony was subsequently taken before the court under objection by the United States, both parties being duly represented by counsel (p. 25 *et seq.*).

There can be no doubt that the decision of Assistant Secretary Spaulding herein (p. 16) is the decision of the Secretary of the Treasury. It is useless to contend that the initials "W. S. C." on this letter make it a "pretended decision" only of the chief of the special agents, or that the decision of the Assistant Secretary was not in legal effect and for all purposes the decision of the Secretary. In the case of *Parish* v. *United States* (100 U. S., 500), Mr. Justice Miller delivering the opinion of the court, it was stated that:

> It has been found in regard to many of these bureaus, and even to the heads of departments, that it is impossible for a single individual to perform in person all the duties imposed on him by his office. Hence statutes have been made creating the office of assistant secretaries for all the heads of departments. It would be a very singular doctrine, and subversive of the purpose for which these latter offices are created, if their acts are to be held of no force until ratified by the principal secretary or head of department. It was to relieve the overburdened principals of some part of these duties that the office of assistant was created.

In *United States* v. *Adams* (24 Fed. Rep., 348) the court said: "An act done by the assistant, and within the authority and power of the Department, must, until the contrary appears, be presumed to have been done under the direction of the Secretary of the Treasury."

In the case of the *John Shillito Co.* v. *McClung* (51 Fed. Rep., 568) where the decision of the Secretary

of the Treasury, on appeal from a decision of the collector, was adverse to the importer, it was contended that such decision, being made, not by the Secretary of the Treasury, but by the Assistant Secretary of the Treasury, acting in his official capacity as such Assistant Secretary only, "was on that account unauthorized and void and of no effect." The court said:

> It having been found impossible for the heads of Departments to perform in person all the duties imposed on them by law, the office of Assistant Secretary was created for all the Departments. In the Treasury Department two of such assistant secretaries are required to be appointed. * * * It admits of no question that * * * the Secretary of the Treasury could have assigned to the Assistant Secretary or Secretaries of the Treasury Department the duty of deciding appeals from assessments made by collectors of customs duties; nor can it be doubted that in the absence or sickness of the head of that Department, such Assistant Secreretaries could have lawfully performed his duties in respect to such matters which have to be determined, settled, and adjusted in that Department. The reply does not negative the fact that the Assistant Secretary was not assigned by the Secretary of the Treasury to the performance of the duty of deciding the appeal, nor that there was no absence or sickness of the head of the Department which devolved the duty upon the Assistant Secretary. Under such circumstances, is the want of authority to be assumed, or will the law raise a presumption to the con-

> trary in support of the official act? We are clearly of the opinion that the latter is the rule to be applied. [Citing *United States* v. *Peralta*, 19 How., 347; *Parish* v. *United States*, 100 U. S., 500; *Chadwick* v. *United States*, 3 Fed. Rep., 756.]

Under sections 161, 233, 234, and 245, Revised Statutes, authorizing the heads of departments in general, and the Secretary of the Treasury in particular, to prescribe the distribution and performance of departmental duties through various officers, including assistant secretaries, it must be assumed that the action of Assistant Secretary Spaulding here was taken by direction and in behalf of the Secretary. Opposing counsel do not, however, urge this point in the present argument.

The necessity of strict compliance with the statutory requirements as to certificates, including signature or visé by authorized officials, is shown by the following rulings of the Attorney-General and the Secretary of the Treasury:

In 21 Op., 6, the Attorney-General held that the requirements of section 6, of the act of 1884, "should be strictly complied with by applicants for admission." In 22 Op., 130, Mr. Griggs, referring to that opinion, said:

> It has been held by your Department [the Treasury Department] that the omission of any of the statutory requirements from a certificate is a fatal defect, and that the provisions of the

> treaty of 1894 * * * do not waive any of the requirements of section 6 of the act of 1884 as to certificates of merchants and others of the exempt classes (*United States* v. *Yong Yew*, 83 Fed. Rep., 832).

And in 21 Op., 347, the Attorney-General held that in the case of a Chinese subject, a resident of Hongkong, seeking admission to the United States, the requirements of Article III of the treaty of 1894 would not be satisfied by a certificate from the Chinese Government, but that the applicant must produce a certificate from the government of Hongkong, signed by the registrar-general.

"The uniform rule of the Treasury Department and the opinions of this Department show the view that the act should be strictly complied with by applicants for admission." (22 Op., 608.) See also 21 Op., 68; id., 424; 22 Op., 72; T. D. 17140, 18954, 20079, 21252.

As is shown by the certificates in this case (pp. 13, 16), they bear on their face a reference to the necessity of exactitude and strict compliance in all details, and to the fact that in any case they show only a *prima facie* right to enter the United States.

The language of section 6 of the act of 1884 clearly shows that these views are founded upon express requirements of the law, and as the certificate is not conclusive, the collector, as one of the "United States authorities" referred to, may, and indeed should, take testimony to controvert or disprove the certificate whenever he is not satisfied that it should be accepted as conclusive evidence of the right to enter. There

is no just reason for claiming that the collector's examination was merely perfunctory and his decision only a "pretended decision"—that is to say, not a decision deliberately, carefully, and judicially made in view of all the facts.

This case shows another endeavor to escape from the act of August 18, 1894, making such an executive decision final unless reversed on appeal to the Secretary of the Treasury. It is another attempt to avoid the executive jurisdiction on the ground that "the alien is entitled of right by some law or treaty to enter this country, but is nevertheless excluded by such officers;" that is, the immigration officers. The court, in the *Lem Moon Sing case* (158 U. S., 538), has made it very clear that the courts will not take jurisdiction of such a case, and that the executive jurisdiction is final, even if the alien may be so entitled of right. For in the case cited the court declined to express any opinion upon the question whether the applicant there was entitled of right under some law or treaty to reenter the United States. Lem Moon Sing, being a returning merchant, made such a claim, perhaps with great force. We do not think there is a similar meritorious ground here, for in the first place Article III of the treaty of 1894 gave no new right to Chinese of the permitted classes, and made no material change in the certificate requirements of the act of 1884; and however strong the appeal which the child's case presented (determined adversely, however, by the Secretary's final decision under his exclusive authority), the case of the wife presents no such appeal.

Other authorities are given by the court below to support the contention that the action of the collector is final and not reviewable by the courts, including the case of *Nishimura Ekiu* (142 U. S., 651), which held that the similar statute there involved "does not require inspectors to take any testimony at all, and allows them to decide on their own inspection and examination the question of the right of any alien immigrant to land."

As to the appellant's brief, the argument practically is that the collector is bound by the certificates presented, and that by "rejecting" them he exceeds his jurisdiction. It merely begs one of the preliminary questions, and a subsidiary one, to suggest that the collector rejected "a certificate that is in all respects such a certificate as the law prescribes." The law provides that the certificate shall be *prima facie* evidence, that it shall be the sole evidence permissible on the part of the person producing it; but that it may be controverted and the facts therein stated disproved by the United States authorities.

Of course the collector considered the certificates and passed upon their validity, and, holding them irregular, insufficient, and inconclusive, passed on to the independent further inquiry which the law not only permits but directs when there is any doubt, and reached the decision which the law makes final when sustained by the Secretary of the Treasury. No number of italicized statements or refined distinctions in argument on the terms of the law can obscure the perfectly plain meaning of section 6 of the act of 1884,

nor weaken the unimpeachable action of the collector under that act and the finality of his decision under the act of August 18, 1894. The collector not only decided that the certificates were not such certificates as the treaty and the law require, but he decided that the applicants were not entitled to admission. In either aspect his decision is not in excess of his jurisdiction, and it is conclusive.

It is a necessary presumption that the action of the collector was in accordance with law, agreeably to the general presumption as to all official acts. Such presumption is particularly binding under the language of the Chinese-exclusion statutes and the act of 1894, and includes all the official acts performed and steps taken. No claim to the contrary may be validly supported by reference to the brevity of the statement indicating the decision. It is by no means confined to the phrase suggested by counsel as the cause of refusal, namely, "irregularity of consular certificates;" for the record shows (pp. 12–14, 16) a hearing in each case before the collector, witnesses on behalf of the applicant being produced, and besides the irregularity of the papers, the ground that there was no evidence of marriage in the wife's case was stated, and after due consideration it was ordered that the applicants be refused a landing because the evidence was insufficient and unsatisfactory to prove the right to land. There is no ambiguity about the collector's finding, which was a proper and orderly "decision;" he is not required to point out the irregularity, nor competent when he finds irregularity to

speculate abstractly on the question whether it does or does not affect the validity of the certificates. He did not "leave the question wholly in the dark," but decided the case, and decided that the certificates were invalid—that is, under all the circumstances shown, insufficient to establish the right and permit a landing. The certificates had the full benefit of their *prima facie* status under the law, but were controverted and overthrown after hearing on the whole case.

The argument that Article III of the treaty of 1894, by its permissive language, relaxes the severity of the certificate requirements of the previous laws, and that in general that treaty has abrogated nearly all the Chinese-exclusion laws, has been elaborately presented to the court in recent cases. The Government here contents itself with a reference to its opposing argument therein, of which an outline is:

1. That the treaties and the statutes are parts of a consistent and interdependent scheme, modifying each other consecutively in certain details, but not abrogating any essential feature of the exclusion plan.

2. That the diplomatic history and the terms of the treaty of 1894 show no intention to repeal existing laws, but the contrary.

3. That (especially in view of the foregoing) the doctrine of implied repeals, never favored, can not be extended to cover such a repeal of the statutes by this later treaty.

4. That the manifest purpose and the consistent construction of the supposed "permissive" language of

Article III of the treaty declares that section 6 of the act of 1884 is only thus far affected, viz, that now a Chinese subject of the permitted classes *must* present the required certificate from the Government of residence and not from the Government of China, unless such person comes from China (21 Op. A. G., 347; 22 id., 201; T. D. 20079, 17140).

II.

THE WIFE'S STATUS ON THE MERITS.

The opposing brief takes no notice of this question, but it seems advisable, nevertheless, for the Government to discuss it briefly.

The case of *Mrs. Gue Lim* (176 U. S., 459), is distinguishable from the present in two important particulars. In the first place, that woman was *allowed to land* by the collector as the wife of a Chinese merchant lawfully domiciled in the United States, who accompanied her husband to this country on his return from a temporary absence in China; and subsequently she was arrested and taken before the district court on the charge that she was a laborer without a certificate of registration as such. The essential point presented by the Government in the Supreme Court was that she was not entitled to enter this country without the certificate of the act of 1884, so that, having been admitted by the collector without that certificate, and being charged with the failure to produce it in the interior judicial jurisdiction, the question of the finality of the frontier officer's decision when adverse was not

presented. In the next place, the assumption as to Mrs. Gue Lim was that she was the *valid* wife of a Chinese merchant.

The statement of the case and the opinion do not indeed use that adjective, but that was the basis upon which the entire argument rested. The language of the opinion constantly refers to *the* wife of a Chinese merchant, and to Mrs. Gue Lim as *the* wife of a merchant. So as to the minor children whose claims were passed upon in that case. The argument conceded them to be legitimate children; the statement is that they "were born in China of parents lawfully married." It was not suggested that they might be legitimate by Chinese law, but not by our own. It was no doubt largely, or chiefly, because of doubt in the mind of the Secretary of the Treasury whether under the peculiar Chinese marriage laws or customs and relations the woman here was the valid wife, and because of our own very different and positive laws on this subject, that his ruling was against her.

The testimony in the present case is supposed to show what are the Chinese laws or customs and the Chinese ceremonies respecting marriage (pp. 25–27, 29–30, 37). It is clear that the petitioner recently married this wife in China, and lived there with her; that this wife is 21 years old and the daughter 10; that the daughter's mother is his first wife, and his wife at present, and is living in China; that after this second or plural marriage petitioner and both of his wives lived for a time together in the same house; that the

law and usage in China are that a man, or at least a rich man, can have as many wives as he wants (pp. 29–35, 38, 39). The petitioner lived in China with both wives in his own house, where the other wife and her boys are—apparently full brothers of the girl.

This subject not only includes the customs, usages, and ceremonies, but also the laws of an alien civilization. The legal status of marriage is a matter of high importance in all civilized countries, whether their civilization is oriental or occidental, and in all Western countries the sanctions of the law of marriage are regarded as peculiarly high and solemn. Western systems have carried into this law Western morals. I conceive that the loose and informal testimony in this record does not constitute adequate proof to bring to judicial notice and establish as a fact the Chinese law upon the subject. Foreign laws are to be proved as facts, and to constitute sufficient and satisfactory proof the courts should be assured either by the testimony of qualified experts, or by the production of duly certified copies or volumes of the laws, published by authority, that the provisions of foreign laws invoked are thus and so.

"No court is to be charged with the knowledge of foreign laws; but they are well understood to be facts, which must, like other facts, be proved before they can be received in a court of justice." (*Hanley* v. *Donoghue* 116 U. S., 1, 4, citing *Talbot* v. *Seeman*, 1 Cranch, 1, 38; *Church* v. *Hubbart*, 2 Cr., 187, 236; *Strother* v. *Lucas*, 6 Pet., 763, 768; *Dainese* v. *Hale*, 91

U. S., 13, 20.) See also *The New York*, 175 U. S., 187; *Liverpool Steam Co.* v. *Phœnix Ins. Co.*, 129 U. S., 397, 445.

Where the foreign system does not include a body of statutes and decisions published under due authority and readily accessible, or preserves the rules of law in ancient books and traditional codes, as appears to be the case with part of the jurisprudence on which the modern civil law is founded, and in the Chinese system, then there should be some authentic deliverance of a living doctor or pundit learned in the particular law, whose standing is well known or can be satisfactorily shown to the court. In any case, it would be manifestly wrong to receive as materially affecting the given controversy the statements of unlearned men in a matter requiring expert qualifications. The witnesses here were vitally interested in the controversy, or else were manifestly friendly and partial toward the principals who were so interested.

These contentions are emphasized when it is considered that after a foreign law has been proved as a fact before a court, its construction and effect become a question of law for the court. (Story on Conflict of Laws, section 638; *Trasher* v. *Everhart*, 3 Gill and John., 234, 242; *Mostyn* v *Fabrigas*, Cowp., 174; *Downs* v. *United States*, 113 Fed. Rep., 144.) This weighty and characteristic function of the court should not rest upon doubtful assertions of the law as a fact.

As to the underlying question, I do not think it is necessary to argue at length. In the abstract, the decision as to Mrs. Gue Lim perhaps may be viewed as

implying nothing relative to the tests by which a wife and children are to be viewed as properly holding and claiming those characters. In this case the child, as the child of the first wife, might be viewed under our own laws as legitimate and as not affected by a second marriage (the first wife living), which under those laws would be merely bigamous. But as to the child, all that is necessary to be said is that the Secretary of the Treasury decided her case adversely on testimony which he found to be conflicting and inconclusive, and that decision is final. If the courts were permitted to consider the parental or filial desires and the well-being of the child, it might be loth to find that she would not be better off with her own mother and her brothers in China than she would be here with her father and a plural wife. As to that wife, it may be that her status in China would be valid and well recognized. We are not concerned with the different ethical notions which might make that possible in China, as has been the case immemorially in many Eastern countries. But we are concerned with our own tests of law and morals as essentially intertwined in this subject; and the woman's position here, whether the other wife is in this country or not, is simply that of a pretended wife, living in bigamy, which is forbidden by all our laws and principles. The petitioner here sees no harm in bigamy or polygamy, if a man can afford it; and that may be the well-recognized attitude of Chinese civilization; but all these ideas are under the ban in this country. The objection that

State laws determining what constitutes a valid marriage are diverse is not tenable; for in the first place there is a certain uniformity running through all American laws on the subject, and in the next place no State law permits plural marriages. The test of the validity of marriage to a single wife is not really involved, or may be left to the law of the place where the marriage was solemnized; the argument of the Government is not subject to the dilemma suggested, for it stops short of that question and merely contends that on any test of the validity of the marriage ceremony and relation no man in the United States can legally have two or more wives at one time.

The facts in the case of Mrs. Gue Lim necessarily imply that it would be harsh and unreasonable to construe the certificate requirements of our Chinese exclusion laws so as to exclude the valid wife of a domiciled merchant; that the contrary view is not required by our laws and would lead to highly immoral results. Quite as clearly would the present case lead to immoral results by other ways if the validity of the marriage relationship and the consequent right of a wife to enter are to be tested by Chinese usages and laws and not by our own, if a man having a first wife living here or in China—by our rules his only valid wife—may also bring in as part of his home and domestic establishment a second wife or any number of plural wives. Suppose a Chinaman's first wife were living with him here. On the claims here advanced he would have the right to bring a second or third wife or any num-

ber of wives. If he did so, would he not be subject to prosecution under the various State and Federal laws prohibiting bigamy and polygamy? And if the first wife were not living here, and he sought to bring in a subsequent wife, or only one of several subsequent wives, we might not ignore the *lex loci* (which generally controls personal and domestic relations) so far as to admit the woman and then prosecute for bigamy; but we certainly ought not to ignore our own principles and laws so far as to admit a concubine, wherever the rest of the "wives" may be. It seems to me that such considerations are conclusive of this controversy.

I respectfully submit that the judgment of the district court of the United States ought to be affirmed and the petition for the writ herein stand dismissed.

HENRY M. HOYT,
Assistant Attorney-General.

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Supreme Court of the United States.

No. 189.—October Term, 1901.

Lee Lung, Appellant,
vs.
I. L. Patterson, Collector of Customs for the Port of Portland, Oregon.

Appeal from the District Court of the United States for the District of Oregon.

[May 19, 1902.]

Mr. Justice McKenna delivered the opinion of the Court.

This is an appeal from a judgment which dismissed a petition in *habeas corpus* on the ground that the court had no jurisdiction to grant the relief which was prayed. The petitioner represented that he was a citizen of the Chinese Empire, and for more than twenty years last past a merchant in the city of Portland, Oregon. He went on a visit to China, but returned to the United States in the month of October, 1898, on the ship Monmouthshire, accompanied, as he claimed, by his wife, whose name is Li Tom Shi, and by his daughter, whose name is Li A. Tsoi. The collector of customs at Portland promptly permitted him to land, recognizing his right to do so as a merchant, but denied the right and refused to permit his wife and daughter to land, although they were not laborers, and presented "certificates issued by the government of Hong Kong, and vised by the consular representative of the United States at the colony of Hong Kong, China," which identified them as the wife and daughter respectively of petitioner, were "in all respects in full compliance with article III of the treaty of 1894, and in all respects in full compliance with section 6 of the act of Congress of July 5, 1884, and acts supplemental to and amendatory thereof," although compliance therewith, it was alleged, was not necessary. The collector made a pretended and partial examination of said certificates, "but no such examination as the law contemplates," asserted the right "to inquire into or decide *aliunde* the certificates," and ignored the same; and his said wife and daughter, it was alleged, "were each, wrongfully and unlawfully and in violation of their rights under the provisions of the treaty of 1894, refused entry into the United States." And it was further alleged—

"That immediately on the rendition of said alleged and pretended decision by the said collector of customs each of said persons, the said wife and daughter of your petitioner aforesaid, took an appeal from said alleged and pretended decision of said collector of customs to the Secretary of the Treasury of the United States; and your petitioner avers that the Secre-

tary of the Treasury has never yet either examined into said appeals nor made any decision therein one way or the other, nor has said appeals or either of them ever been considered, examined or decided, either by O. L. Spaulding, Assistant Secretary of the Treasury, or by any other person except as hereinafter stated.

"That on April 18, 1900, one W. S. Chance, then chief of the special agents of the Treasury Department at Washington, D. C., pretended to examine said appeals and rendered a pretended decision therein, which pretended decision purports to affirm the alleged decision of the collector of customs aforesaid refusing to allow said Li Tom Shi and said Li A. Tsoi, wife and daughter of your petitioner, to enter the United States.

"Your petitioner avers that it is claimed, as your petitioner is advised and believes, by the collector of customs aforesaid, that said alleged decision by said W. S. Chance, as hereinbefore stated, is the decision of O. L. Spaulding, Assistant Secretary of the Treasury; but your petitioner denies that said O. L. Spaulding, either as Assistant Secretary of the Treasury or otherwise, has ever made any examination of said appeals, or has ever made any decision therein one way or the other.

"And your petitioner further avers that the said O. L. Spaulding as Assistant Secretary of the Treasury has no authority or jurisdiction whatever to examine into or decide said appeals or either of them; that said O. L. Spaulding, as Assistant Secretary of the Treasury, has never been legally or lawfully designated by the Secretary of the Treasury to examine into and decide such appeals, and your petitioner avers furthermore that the Secretary of the Treasury has no jurisdiction or power whatever to designate or authorize Assistant Secretary of the Treasury O. L. Spaulding, or any other Assistant Secretary of the Treasury, to examine into or decide said appeals."

That the collector of customs, notwithstanding the invalidity of the alleged decision of W. S. Chance, and that the appeal had not been examined or decided by the Secretary of the Treasury, detained petitioner's wife and daughter on board the steamship Braemen and threatened and intended to send them back to China.

That the collector had no jurisdiction to make the decision he claims to have made, and that no examination or decision of the appeals as the law contemplates were ever made by the Secretary of the Treasury, or by any Assistant Secretary of the Treasury who had any jurisdiction or power to examine and decide such appeals. That the wife and daughter of petitioner have the right to have their appeals decided, and until such decision the collector had no power or jurisdiction to send the wife and daughter of petitioner back to China; and should they be sent back they will be removed from the jurisdiction of the court. A writ of *habeas corpus* was prayed for.

The collector of customs made due return to the writ, and denied that Li Tom Shi was the wife of the petitioner, and that Li A. Tsoi was his daughter; denied that the certificates were in regular form, and alleged they were not in conformity with the laws of the United States, in that

they were signed by one F. A. May, who was captain general of police of Hong Kong and not the registrar general; that a Mr. Lockhart was registrar general, and that his name did not appear on the certificates. Denied that he (the collector) was without jurisdiction or that he ignored the certificates. Alleged that he took testimony, and on that testimony and the certificates he rendered his decision, as follows, refusing the said Li Tom Shi and Li A. Tsoi the right to land:

"No. 1.

"Office of the collector of customs, district of Willamette.

"Portland, Oregon, April 7, 1900.

"Now at this time comes on for hearing the application of Mrs. Li Tom Shi, a subject of the Emperor of China, for admission to the United States as a wife of Lee Lung, and after hearing the evidence of applicant and witnesses on behalf of the applicant, and the evidence of Lee Lung and Miss Li A. Tsoi, and irregularity of consular certificate, and no evidence of marriage, and being at this time fully advised in the premises, it is ordered that the said Mrs. Li Tom Shi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove her right to land.

[SEAL.] "I. L. PATTERSON,
Collector of Customs."

A like decision was rendered in the case of Li A. Tsoi. The return admitted that the said persons took an appeal from the decision to the Secretary of the Treasury, but denied that the Secretary had not examined into said appeal or rendered a decision therein, and denied all the other allegations of the petition in regard to such appeal. Admitted that, under the decision of the Secretary of the Treasury affirming his (the collector's) decision, he held the said Li Tom Shi and Li A. Tsoi in his custody for deportation to the country from whence they came.

The certificates were attached to the return, but as the only criticism of them is that they were not issued by the registrar general of Hong Kong, they are omitted. They were signed "F. H. May, by registrar general, Hong Kong." They were sealed with the seal of the registrar general and certified to by R. Wildman, United States consul general.

The following was also attached to the return:

"Division of special agents,
Treasury Department, Office of the Secretary,
Washington, April 18, 1900.

"Collector of customs, Portland, Oregon.

"SIR: The department has received your letter of the 11th instant, transmitting an appeal from your decision denying admission to Chinese persons named Li Tom Shi and Li A. Tsoi, the alleged wife and daughter of Lee Lung, a Chinese merchant domiciled in this country.

"The applicants presented to you certificates in the form prescribed by section 6 of the act of July 5, 1884, executed by 'F. H. May by registrar

general,' Hong Kong, and you state that Mr. May is the captain of police at Hong Kong and not the registrar general. You are advised that certificates so issued are not valid, the incumbent of the office of registrar general at Hong Kong only being recognized as the proper authority for the issuance of such certificates.

"The appeal filed in this case refers to the recent decision of the Supreme Court in the case of *The United States* v. *Mrs. Gue Lim et al.*, promulgated in Synopsis 22056, wherein it was held that 'when the fact is established to the satisfaction of the authorities that the person claiming to enter, either as wife or minor child, is in fact the wife or minor child, of one of the members of a class mentioned in the treaty as entitled to enter, then that person is entitled to admission without the certificate.'

"In this case Li Tom Shi is admitted to be the second and plural wife of Lee Lung, a Chinese merchant domiciled in this country, whose first wife resides in China, and it is claimed that Li A. Tsoi is the minor child of the said Lee Lung by said first wife.

"The laws of the United States do not recognize plural marriages as valid, and while they may be so recognized in China, the said Li Tom Shi is not the valid wife of Lee Lung under our laws and in the light of the decision of the Supreme Court referred to.

"In a letter addressed to the collector of customs at Port Townsend, Washington, it was stated that 'in instances where women or minor children apply for admission at your port, claiming to be the wives or children of Chinese persons lawfully domiciled here as persons of the exempt class of Chinese, you should require such women or children to produce evidence sufficient to satisfy you that they are the wives or children of such persons.'

"In the cases under consideration the evidence presented in the case of Li A. Tsoi is conflicting and inconclusive, and not of the satisfactory character required.

"Confirming department's telegram of this date, you are therefore advised that the appeals of Li Tom Shi and Li A. Tsoi are overruled and your decision denying them admission is sustained. The enclosures of your letter are herewith returned.

"Respectfully,

O. L. SPAULDING,
Assistant Secretary.
W. S. C."

The petitioner filed a reply to the return, in which he again averred the conformity of the certificates to law. Denied that they were required to be signed by the registrar general of Hong Kong, and averred, however, that the certificates were signed by F. A. May, "at the instance and under the direction of the registrar general and as and for him," and contained his seal. Again averred that the action of the collector in regard to the certificates and the admission of evidence was in excess of his jurisdiction. Denied that the Secretary of the Treasury, by O. L. Spaulding, rendered any opinion affirming the decision of the collector; averred that the decision attached to the return shows on its face that it was the decision of W. S. Chance, chief of the special agents of the Treasury Department, and averred that "the pretended hearing before the collector of customs on the 7th day of April, 1900, as aforesaid, was had before your petitioner

had secured any counsel, and he had no counsel present to advise him as to his rights before the collector of customs, and that such examination was without jurisdiction, perfunctory and was not a thorough examination of the case."

The testimony of several witnesses was introduced before the District Court against the objection of the district attorney. It showed that the petitioner was a merchant of Portland, Oregon; that he had gone back to China and there married Li Tom Shi according to the Chinese customs and with the usual Chinese ceremonies, but that he had another wife with whom he lived when in China, and that Li A. Tsoi was the daughter by that wife. It was testified that a man in China could have as many wives as he had means to support.

The District Court, however, determined that it had no jurisdiction to review the action of the executive officers, and dismissed the petition. The court cited *Nishimura Ekiu's case*, (142 U. S. 651,) and *United States* v. *Gin Fung*, decided by the Circuit Court of Appeals of the Ninth Circuit, (100 Fed. Rep. 389.) The District Court said:

"These cases establish the doctrine that the collector of customs, in determining the right of Chinese persons to land, may act upon his own information and discretion, and that such action, however taken, is conclusive of the matter, subject to the right of appeal to the Secretary of the Treasury; that his decision, if he decides not to hear testimony, or not to give effect to evidence which the laws of Congress have provided shall be sufficient to establish the right to land in the first instance, or decides not to decide, is conclusive. Under the doctrine of these cases, it is immaterial, so far as the jurisdiction of this court is concerned, whether the petitioner's appeal to the Secretary of the Treasury is heard by the Secretary in person or by a subordinate official in his department or is heard at all."

It was decided in Nishimura Ekiu's case that Congress might entrust to an executive officer the final determination of the facts upon which an alien's right to land in the United States was made to depend, "and that if it did so, his order was due process of law, and no other tribunal, unless expressly authorized by law to do so, was at liberty to re-examine the evidence on which he acted, or to controvert its sufficiency." This doctrine was affirmed in *Lem Moon Sing* v. *United States*, (158 U. S. 538,) and at the present term in *Fok Young Ho* v. *United States*, and *Lee Gon Young* v. *United States*.

Counsel for petitioner concede the rule but deny its application to the pending case. Their argument is that the sixth section of the act of 1884, regarding it in force, precludes inquiry beyond the certificates. The applicable provisions are quoted as follows:

". . . Such certificate, vised as aforesaid, shall be *prima facie* evidence of the facts set forth therein, and shall be produced to the collector of customs of the port in the district of the United States at which the

person named therein shall arrive, and afterwards produced to the proper authorities of the United States whenever lawfully demanded, and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States, but such certificate may be controverted and the facts therein stated disproved by the United States authorities."

It is urged that the statute makes the certificates evidence, and that the collector had no power to disregard the certificates, and "whether he did not consider them at all and did not pass upon their validity or invalidity, as in either view of the case, we respectfully submit the collector is not chargeable merely with error, in which event his decision is not reviewable by the court, but with the more serious charge of having exceeded his jurisdiction, in which case, we submit, his decision is reviewable."

But jurisdiction is given to the collector over the right of the alien to land, and necessarily jurisdiction is given to pass on the evidence presented to establish that right. He may determine the validity of the evidence, or receive testimony to controvert it, and we cannot assent to the proposition that an officer or tribunal, invested with jurisdiction of a matter, loses that jurisdiction by not giving sufficient weight to evidence, or by rejecting proper evidence, or by admitting that which is improper.

The hearing before the collector is described in the petition as "pretended," but its extent, and upon what evidence, the record does not disclose. The record does show that appearance by counsel was not considered necessary, but "every facility for appearing" was given. And even if it were essential, in our judgment, could we conclude that the decision of the collector established that the certificates alone were considered?

It is further contended that the treaty of 1894 alone provides the evidence which a member of the exempted class of Chinese must produce, and abrogates the act of 1882 and the acts amendatory thereof, and also abrogates the treaty of 1880.

Article III of the treaty of 1894 is as follows:

"The provisions of this convention shall not affect the right at present enjoyed of Chinese subjects, being officials, teachers, students, merchants or travelers for curiosity or pleasure, but not laborers, of coming to the United States and residing therein. To entitle such Chinese subjects as are above described to admission into the United States they may produce a certificate from their government, or the government where they last resided, vised by the diplomatic or consular representative of the United States in the country or port whence they depart."

This court, however, held adversely to the contention of petitioner in the case of *United States* v. *Lee Yen Tai*, decided at the present term, (April 12, 1902.) In that case the twelfth section of the act of 1882 was more immediately under consideration, but the reasoning applies to the sixth section as well.

Counsel for petitioner do not urge the insufficiency of the decision of Assistant Secretary Spaulding, therefore we may consider that it is conceded to have been made by the authority of the Secretary. The District Court, however, in its opinion, seems to imply that, if there had been no hearing by the Secretary, the court, nevertheless, would have been without jurisdiction to restrain the deportation of the Chinese persons. On that we do not think it is necessary to express an opinion. There is an intimation to the contrary by the Circuit Court of Appeals of the Ninth Circuit in the case of *United States* v. *Gin Fung, supra.*

Judgment affirmed.

Mr. Justice BREWER and Mr. Justice PECKHAM dissented.

Mr. Justice GRAY did not hear the argument and took no part in the decision.

True copy.

Test:

Clerk Supreme Court, U. S.